No. 23-CV-499

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

J.D. and K.D.,

Appellants,

v.

UNIVERSAL HEALTH INSURANCE CO.,

Appellee.

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

BRIEF FOR APPELLANTS

Team 9
Counsel for Appellant

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ISSUES PRESENTED

I. Under Federal Rule of Civil Procedure 10(a), can a teenage sexual assault victim proceed anonymously against a private company when identification could exacerbate her mental illness, inflict social stigma, and create a chilling effect for other ERISA claimants?

II. Under § 1132 of ERISA and CIGNA v. Amara, can a claim requesting injunctive relief proceed past a motion to dismiss when the claim requests equitable relief from a statutory violation and is a simultaneous claim seeking relief?

STATEMENT OF THE CASE

Statement of Facts

K.D. is a nineteen-year-old sexual assault victim. Compl. p. 2. The assault took place during K.D.'s sophomore year of high school, triggering her anxiety, exacerbating her depression, and causing isolation behavior and the development of a substance use disorder. *Id.*

J.D., K.D.'s mother, receives health insurance through her employer CIA Consulting, LLC. *Id.* at 1. Universal Health Insurance Company ("Universal") is J.D. and K.D.'s healthcare plan (the "Plan"), and governed by ERISA. *Id.* at 1-2. K.D. is a beneficiary of the Plan. *Id.* at 1. The Plan allows for "mental health and substance use disorder services, including residential treatment." *Id.* at 2. Universal also has internal guidelines separate from the Plan. *Id.* The residential treatment guidelines indicate patients must first fail at a lower level of care before accessing long-term residential care. *Id.*

After K.D.'s assault, she received "intensive outpatient treatment" to treat her depression and anxiety. *Id.* Universal covered the treatment, but K.D.'s condition worsened. *Id.* at 2-3. K.D. attempted suicide and Universal admitted her to a psychiatric hospital where she stayed for three weeks; this was approved by Universal. *Id.* Upon recommendation by the hospital, K.D. entered residential treatment. *Id.*; Dr. Evelyn Smith Decl. p.1. K.D.'s treatment team diagnosed her "with major depressive disorder, generalized anxiety disorder and substance use disorder." Compl. p. 3.

After only three weeks, Universal alerted K.D. it would no longer cover her residential treatment because she could be treated with a lower level of care. *Id.* at 3-4; Ex. B p. 1. Her treatment team disagreed and, along with her mother, filed an urgent appeal request. Compl. p. 4. Universal denied their requests. *Id.* Universal excused its denial by claiming that because K.D. was "no longer actively suicidal" she could be treated with a lower level of care. Ex. B p. 1.

K.D.'s treatment specialists raised concerns about K.D.'s high risk of mortality and relapse without round-the-clock care during the appeals process. Compl. p. 4. K.D's mother "paid out-of-pocket" and "took out a second mortgage for K.D.'s treatment." *Id.* However, Universal continued to deny coverage for K.D.'s residential treatment. Ex. C p. 1. According to Universal's final letter denying treatment, K.D. and her mother "exhausted the internal appeal process for [their]

plan" and then holding the "right to bring a civil action under ERISA [29 U.S.C. 1132(a)]." *Id.* at 2. Universal cited its Standard of Care Guidelines for its denial decision, claiming K.D. "could receive care at a lower level partial hospitalization level of care." *Id.* at 1.

Dr. Evelyn Smith, a "Board certified psychiatrist" who treated K.D. weekly, identified K.D.'s recovery as "precarious," believing that forcing K.D. to proceed in her name could trigger her depression and anxiety. Dr. Evelyn Smith Decl. p. 1-2. K.D. feels vulnerable and ashamed about the treatment she received for her substance misuse and mental illness and expressed fears of social ostracization. *Id.* at 2. Considering this, Dr. Smith "strongly recommend[ed] against" forcing K.D. to proceed in her name. *Id.*

Procedural History

J.D. and K.D. filed a complaint containing two causes of action under ERISA. Compl. pp. 5-6. In support of the complaint, Dr. Evelyn Smith filed a declaration concerning K.D.'s mental health. Dr. Evelyn Smith Decl. p. 2. J.D. and K.D. filed a motion to proceed anonymously. Mem. Op. & Order p. 1. Universal filed a response opposing K.D.'s motion to proceed anonymously and filed a motion to dismiss Count II and J.D. as a party. *Id.* at 3-4.

Count I is a cause of action against Universal's improper denial of K.D. and J.D.'s benefits and explains K.D. "is entitled to enforce her rights to benefits under

the terms of the Plan and to clarify her rights to future benefits under the terms of the Plan." Compl. p. 5. Count II requests relief from Universal's "fail first" guidelines because the guidelines violate the Mental Health Parity and Addiction Equity Act of 2008 ("Mental Health Parity Act"). *Id. a*t 6. The Mental Health Parity Act prohibits Plan restrictions and limitations on mental health or substance abuse disorder treatments that exceed medical and surgical benefit restrictions. *Id.* K.D. asserts the Plan does not violate the Mental Health Parity Act. *Id.* Count II requests injunctive relief under § 1132(a)(3) "requiring Universal to follow the terms of the Plan in making future benefit determinations and to refrain from applying internal guidelines inconsistent with the parity provisions of ERISA; and such other appropriate equitable relief. . . ." *Id.* at 7.

In its memorandum opinion and order, the lower court denied J.D. and her mother's motion to proceed anonymously, only allowing them to refile their complaint with information redacted and K.D.'s medical records under seal. Mem. Op. & Order p. 1, 7. The lower court also granted Universal's motion to dismiss J.D. as a plaintiff. *Id.* at 4. In its analysis, the court reasoned that the anonymity criteria did not weigh in favor of granting anonymity because of K.D.'s age and option to redact and seal her information. *Id.* at 5-7. The lower court granted Universal's motion to dismiss Count II. *Id.* at 1.

The district court granted Universal's motion to dismiss Count II, which removed K.D.'s claim regarding Universal's statutory violation. *Id.* at 10. The district court ruled Count II is a duplicate remedy found in Count II. *Id.* The court also determined K.D.'s argument regarding Universal's violation of the Mental Health Parity Act was an "inappropriate" merits argument. *Id.* at 9. The lower court dismissed the case because the plaintiffs would not proceed if required to file under their names. *Id.* at 10-11. Responding to the motion to dismiss, J.D. and K.D. filed a timely notice of appeal which this Court granted.

SUMMARY OF ARGUMENT

This case concerns protecting a teenager's privacy and access to care. Privacy protection extends to "the individual interest in avoiding disclosure of personal matters." *Nixon v. Adm'r of Gen. Servs.*, 433 U.S. 425, 457 (1977) (*quoting Whalen v. Roe*, 429 U.S. 589, 599 (1977)). Plaintiff anonymity provides the perfect balance of protecting privacy and ensuring public access because "courts can achieve protection for plaintiffs while maintaining public access to the issues involved in the proceedings." Jayne S. Ressler, *Privacy, Plaintiffs, and Pseudonyms: The Anonymous Doe Plaintiff in the Information Age*, 53 U. Kan. L. Rev. 195, 237 (2004).

Furthermore, protecting access to care is equally important. When access to care is wrongfully inhibited, ERISA provides remedies to restore access. *See* 29 U.S.C. § 1001(b). ERISA remedies are not limited to monetary benefits alone. *Id.* § 1132(a)(3). ERISA also provides injunctive relief when access is inhibited by the companies responsible for covering care.

Here, the district court erred as a matter of law and abused its discretion for two reasons. First, the district court erred by failing to apply three relevant *In re Sealed Case* criteria and abused its discretion by improperly weighing two relevant criteria. Second, the district court erred as a matter of law by failing to apply the relevant framework under *Amara* for § 1132 claims, simultaneous claims, and duplicative remedies under ERISA.

I ANONYMITY

K.D. seeks to protect her privacy by remaining anonymous. The district court erred by failing to apply relevant *In re Sealed Case* criteria relating to K.D.'s risk of mental harm, the fairness of her request, and Universal's status as a private party. Under *In re Sealed Case*, the court must consider the relevant risk of harm that identification poses to the party requesting anonymity. Identification threatens K.D.'s mental health because proceeding in her name could exacerbate her pre-existing mental health issues. Dr. Smith substantiated her risk of mental illness, but the court erred by failing to consider this risk of harm.

The lower court must consider whether a request to proceed anonymously unfairly prejudices the non-requesting party. K.D. can proceed anonymously without risking unfair prejudice to Universal because Universal knows her identity and failed to show a risk of harm. Finally, because Universal is a private party and not a government agency, there is no heightened public interest in K.D.'s case.

The court also abused its discretion by improperly weighing the criteria relating to K.D.'s mental illness, susceptibility to social stigmatization, and the public's interest in disclosure. The court must consider the sensitive and personal nature of the requesting party's matters. K.D.'s matters are highly sensitive and personal because she suffered from sexual assault. Moreover, identifying her as a teenage victim of depression and anxiety could lead to social stigmatization. Lastly, the public holds a general interest in open judicial proceedings, specifically the issues and facts involved in a case. K.D. proceeding anonymously furthers the public's interest in disclosure and protects K.D.'s privacy because anonymity does not require concealing facts and medical documents.

This Court should reverse and remand the district court's decision because it failed to consider and improperly weighed four relevant *James* and *Sealed Plaintiff* factors and improperly considered the public's interest in disclosure.

II COUNT II

This Court should protect K.D.'s access to injunctive relief under ERISA § 1132(a)(3). The district court erred as a matter by law by dismissing Count II for two reasons. First, the district court failed to include the Supreme Court case of *CIGNA Corp. v. Amara* to its analysis of Count II because a statutory violation must be remedied under § 1132(a)(3). Under the *Amara* framework if the claim does not invoke the Plan, the court should allow the claim to proceed under § 1132(a)(3). The district court failed to recognize that Universal's internal guideline is separate from the Plan. Because the internal guideline is not the Plan, relief must be found under § 1132(a)(3). Moreover, relief for Count II must be found solely under § 1132(a)(3) because the fail first guidelines violate the Mental Health Parity Act.

Second, the *Amara* framework allows simultaneous claims. The framework also provides that when a claim fails under an analysis under § 1132(a)(1)(B), the court should analyze the claim under §1132(a)(3). Prior to summary judgment, more than one claim should be permitted to proceed past the motion to dismiss stage. Moreover, a majority of circuits have applied the *Amara* analysis and the Federal Rules of Civil Procedure to ensure the availability of viable remedies.

This Court should reverse and remand the district court's decision because the district court failed to apply the *Amara* framework to a simultaneous claim requesting equitable relief from a statutory violation.

ARGUMENT

I THE DISTRICT COURT ERRED AS A MATTER OF LAW BY FAILING TO APPLY AND IMPROPERLY WEIGHING RELEVANT CRITERIA MENTIONED IN *IN RE SEALED CASE* REGARDING K.D.'S INTEREST IN PRIVACY.

The Supreme Court implicitly recognized an exception to the general presumption against anonymity and to the federal rules requiring parties to state their names. *See Roe v. Wade*, 410 U.S. 113, 124 (1973). Federal Rule of Civil Procedure ("FRCP") 10(a) requires the complaint to "name all parties." Fed. R. Civ. P. 10(a). However, FRCP 10(a) does not impose absolute burdens, and these burdens must "yield[] 'to a policy of protecting privacy in a very private matter.'" *S. Methodist Univ. Ass'n of Women L. Students v. Wynne & Jaffe*, 599 F.2d 707, 713 (5th Cir. 1979) (quoting *Doe v. Deschamps*, 64 F.R.D. 652, 653 (D. Mont. 1974)). Granting anonymity "has become increasingly common over the last 50 years." *B.R. v. F.C.S.B.*, 17 F.4th 485, 495 (4th Cir. 2021). Protecting a party's privacy by granting anonymity requires a balancing test and a criteria analysis which informs the court's balancing test. *In re Sealed Case*, 931 F.3d 92, 96 (D.C. Cir. 2019). This Court allows parties to remain anonymous when the party's legitimate interest in anonymity successfully balances against "countervailing interests in full disclosure." *Id.*

This Court reviews "de novo the criteria used by a district court to decide whether to grant a motion to proceed anonymously." *Id.*; *see Brayton v. Off. of the U.S. Trade Representative*, 641 F.3d 521, 524 (D.C. Cir. 2011) ("[w]e examine *de*

novo whether the district court applied the correct legal standard."). This Court reviews the lower court's application of the criteria raised in *In re Sealed Case* for abuse of discretion. *In re Sealed Case*, 931 F.3d at 96. The lower court's failure to consider a relevant factor pertaining to the criteria, reliance on an improper factor, and use of reasoning unsupportive of its conclusion constitutes an abuse of discretion. *See Kickapoo Tribe of Indians v. Babbitt*, 43 F.3d 1491, 1497 (D.C. Cir. 1995).

Here, the District Court failed to apply and improperly weighed relevant *In re Sealed Case* criteria for three reasons. First, the risk of harm to K.D.'s mental health, lack of prejudice against Universal, and Universal's status as a private party are criteria weighing in favor of granting anonymity. Second, K.D.'s sexual assault, risk of social stigmatization, and the chilling effect imposed on ERISA benefits claimants are relevant considerations. Finally, K.D. proceeding anonymously and not sealing her complaint, weighs in favor of the public's interest in disclosure.

A. The District Court Erred by Failing to Apply Relevant Criteria Concerning K.D.'s Risk of Mental Harm, the Fairness of the Case, and Universal's Status as a Private Party.

This Court found in *In Re Sealed Case* that the five criteria from *James* and ten criteria from *Sealed Plaintiff* "inform" the Court's ultimate balancing test. *In re Sealed Case*, 931 F.3d at 97(first citing *James v. Jacobson*, 6 F.3d 233, 238 (4th Cir. 1993); then citing *Sealed Plaintiff v. Sealed Defendant #1*, 537 F.3d 185, 190 (2d

Cir. 2008)). While not required to consider every *James* or *Sealed Plaintiff* criteria, the district court must consider all *relevant* criteria. *In re Sealed Case*, 931 F.2d at 97. The lower court cited multiple other circuits but failed to reference this Court's holding from *In re Sealed Case*—requiring the court to apply all relevant criteria—anywhere in its memorandum opinion. *See* Mem. Op. & Order p. 5. Because of this, the court erred as a matter of law by failing to apply the relevant risk of harm, absence of prejudice, and status of the non-moving party criteria. *See Sealed Plaintiff*, 537 F.3d at 190.

1. K.D. faces a Risk of Mental Harm.

When plaintiffs face a threat of mental harm because the court orders them to proceed under their name, the threat of harm weighs in favor of anonymity. *See In re Sealed Case*, 971 F.3d 324, 328 (D.C. Cir. 2020). Other circuits have used the threat of harm criterion to protect plaintiffs from the threat of psychological harm. *See, e.g., Plaintiff B v. Francis*, 631 F.3d 1310, 1317-18 (11th Cir. 2011) (finding the lower court disregarded the psychological damage that could result from identification); *Doe v. Stegall*, 653 F.2d 180, 186 (5th Cir. 1981) (protecting plaintiffs from "serious social ostracization").

Here, Dr. Evelyn Smith declared that K.D's identification presents harm to her psychological health. K.D. suffered from depression and generalized anxiety and she attempted suicide, but she started to recover after receiving treatment. K.D.

alleges a risk of aggravated depression and anxiety and fears she will be shunned if forced to disclose her identity.

But K.D. is not the only one holding these fears. Dr. Smith, a psychiatrist who met with K.D. weekly, identified K.D.'s recovery as "precarious," believing her mental illness could recur if she is forced to proceed in her name. Dr. Evelyn Smith Decl. p. 2. K.D. also faces an increased risk of suicidal attempts if ordered to proceed under her name. *See id.*; Goldsten, et al. *Suicide Attempts in a Longitudinal Sample of Adolescents Followed Through Adulthood: Evidence of Escalation*, 83 J. of Consulting and Clinical Psych. 253, 261 (2015) ("[i]t is also possible that there is other 'scarring' that occurs with prior suicide attempts, which renders individuals more vulnerable for future episodes of suicidal behavior."). The district court failed to consider this evidence in relation to the risk of harm presented to K.D.'s mental health.

The Eleventh Circuit agrees that courts should not "improperly discount[] expert evidence" when determining whether to grant anonymity. In *Francis*, the Eleventh Circuit found that the district court did not properly consider the expert evidence and directed the court to grant anonymity on remand. 631 F.3d at 1315, 1319. There, a clinical psychologist interviewed the plaintiffs, finding identification created a risk of mental harm. *Id.* at 1317-18. Similarly, here, the district court improperly discounted Dr. Smith's declaration and, without explanation, found Dr.

Smith biased and her declaration equivocal. But there is nothing equivocal about Dr. Smith's strong recommendation that the court allow K.D. to proceed anonymously. Thus, the lower court erred by failing to consider the risk of mental harm relating to K.D.'s substantiated risk of depression, anxiety, and suicide, and how this criteria weighs in favor of granting anonymity.

2. K.D. can Proceed Anonymously Without Unfairly Prejudicing Universal.

When analyzing the circumstances of a case involving a request for protection of privacy, "the court should take into account the risk of unfairness to the opposing party." *United States v. Microsoft Corp.*, 56 F.3d 1448, 1464 (D.C. Cir. 1995). This unfairness analysis often involves looking "at the damage to a defendant's reputation caused by the anonymous proceeding, the difficulties in discovery, as well as at the fundamental fairness of proceeding in this manner." *EW v. New York Blood Ctr.*, 213 F.R.D. 108, 112 (E.D.N.Y. 2003) (collecting cases). Proceeding anonymously typically does not pose a risk of unfairness when the defendant knows the identity of the anonymous plaintiff. *Id.*

By proceeding anonymously, K.D. does not pose a risk of prejudice or unfairness to Universal because Universal does not allege damage to its reputation, and it knows K.D.'s identity. The court failed to consider this absence of a risk of unfairness. Moreover, Universal only opposed K.D.'s motion to proceed anonymously because of the public's interest, not a risk of unfairness. Mem. Op. &

Order at 3-4. Universal failed to allege that it does not know K.D.'s identity. Exhibit B indicates that Universal likely knows K.D.'s identity and anticipated she would seek legal relief. Thus, the lower court erred by failing to consider the fairness of K.D. proceeding anonymously and how this criterion weighs in favor of anonymity.

3. Universal's Status as a Private Party Lessens the Public Interest.

The public interest is lessened in legal proceedings where the non-requesting party is a private party, not a government agency. *In re Sealed Case*, 971 F.3d at 329 ("there is a heightened public interest when an individual or entity files a suit against the government."). The public interest only heightens when the "[d]efendants are public officials and government bodies." *Doe v. Megless*, 654 F.3d 404, 411 (3d Cir. 2011) (*quoting Doe v. Megless*, CIVIL ACTION No. 10-1008, 2010 U.S. Dist. LEXIS 79098, at *1, *7 (E.D. Pa. Aug. 5, 2010)).

K.D. sued a private party, Universal, and her case against Universal will not alter public law because she does not ask the court to change ERISA but to enforce it. The District Court noted Universal's status as an insurance company in its opinion. Still, it failed to consider that because Universal is a private party, "[n]o heightened public interest need attach." *Doe v. Fed. Republic of Ger.*, Civil Action No. 23-1782 (JEB), 2023 U.S. Dist. LEXIS 129607, at *1, *8 (D.D.C. July 3, 2023). Thus, this Court should consider the relevance of Universal's status as a private agency and find that this weighs in favor of anonymity.

B. The District Court Abused its Discretion by Improperly Weighing the Sensitive and Personal Nature of K.D.'s Sexual Assault and Mental Illness and the Public's Interest in Disclosure.

When the requesting party seeks anonymity to "preserve privacy in a matter of [a] sensitive and highly personal nature," the Court must consider how this criteria supports "the private interests at stake." *In re Sealed Case*, 931 F.3d at 97 (*quoting James*, 6 F.3d at 238). Forced disclosure of "personal information of the utmost intimacy" implicates highly sensitive and personal matters. *S. Methodist Univ.*, 599 F.2d at 713. Sensitive and highly personal matters "commonly involve[] intimate issues such as sexual activities." *In re Sealed Case*, 971 F.3d at 327.

While the district court weighed the highly sensitive and personal criterion, it failed to consider K.D.'s sexual assault, her risk of social stigmatization, and the chilling effect for all ERISA claimants with mental illnesses. *See* Mem. Op. & Order p. 6-7. The privacy rights of K.D., a victim of sexual assault, depression, and anxiety, must be protected by allowing her to proceed anonymously. Other circuits have protected the privacy of sexual assault victims by allowing them to proceed anonymously. *See, e.g.*, *B.R.*, 17 F.4th at 489, 497 (victim alleged sexual assault and harassment in her complaint); *Doe v. Blue Cross & Blue Shield United*, 112 F.3d 869, 872 (7th Cir. 1997) ("fictitious names are allowed when necessary to protect the privacy of children, rape victims, and other particularly vulnerable parties or witnesses.").

After finishing her sophomore year of high school, K.D. was sexually assaulted. The district court mentioned the sensitive and personal nature of K.D.'s mental illness but failed to consider how her sexual assault weighs into her privacy interests. The Fourth Circuit allowed a victim of sexual assault to proceed anonymously to protect her privacy. *B.R.*, 17 F.4th at 489. In that case, the court found the claims involved highly sensitive and personal matters. *Id.* This Court should consider how K.D.'s status as a sexual assault victim weighs into her request for anonymity and how she could suffer from psychological trauma if forced to proceed under her name. *See Francis*, 631 F.3d at 1317-18 (finding the lower court failed to consider the weight of the expert's testimony on the psychological damage of a certain label).

In cases involving mental illness, courts have protected the privacy of parties seeking anonymity because "the social stigma attached to the plaintiff's disclosure was found to be enough to overcome the presumption of openness in court proceedings." *Doe v. Frank*, 951 F.2d 302, 324 (11th Cir. 1992). Additionally, requiring plaintiffs suffering from mental illness to proceed under their names might create a chilling effect, discouraging others from asserting ERISA claims for mental health and accessing care. *See Doe v. Mass. Inst. of Tech.*, 46 F.4th 61, 71 (1st Cir. 2022) (finding anonymity necessary to "forestall a chilling effect on future litigants who may be similarly situated."). K.D., a teenager, suffered from depression and

anxiety, and this suffering should remain private and unassociated with her identity because they are sensitive and highly personal matters.

Anonymity protects K.D. against social stigma and protects against a possible chilling effect for all individuals with mental illnesses seeking ERISA benefits. Courts have highlighted the risk of social stigmatization for ERISA claimants with mental illnesses. *See, e.g.*, *Doe v. Hartford Life & Acc. Ins. Co.*, 237 F.R.D. 545, 547, 551 (D.N.J. 2006) ("there is substantial public interest in ensuring that . . . the rights of mental illness sufferers are represented fairly and without the risk of stigmatization."); *Doe v. Std. Ins. Co.*, No. 1:15-cv-00105-GZS, 2015 WL 5778566, at *1, *3 (D. Me. Oct. 2, 2015) (finding the plaintiff and other ERISA claimants must not be "chilled from ever reaching the courthouse steps for fear of repercussions that would ensue if their condition was made public").

Even two of the district court cases cited by the lower court admit that social stigmatization supports the sensitivity and personality of a matter. *See L.R. v. Cigna Health & Life Ins. Co.*, No. 6:22-CV-1819-RBD-DCI, 2023 WL 4532672, at *1, *4 (M.D. Fla. July 13, 2023) (admitting that a showing of social stigma may warrant anonymity); *Doe v. UNUM Life Ins. Co. of Am.*, 164 F. Supp. 3d 1140, 1147 (N.D. Cal. 2016) (finding the primary harm asserted was embarrassment, not social stigmatization). Unlike these plaintiffs, K.D. expressed her fear of stigmatization, and supported her reasoning for wanting privacy through Dr. Smith's declaration.

See Dr. Evelyn Smith Decl. p. 2 (believing K.D. could suffer a set-back from reconnecting with her peers if forced to proceed in her name).

ERISA entitles K.D.'s safe access to care as a victim of mental illness; she and other victims of mental illness must not be "chilled from ever reaching the courthouse steps for fear of repercussions that would ensue if their condition was made public." *Doe*, 237 F.R.D. at 550. The district court concluded K.D. could ameliorate the possibility of a chilling effect by refiling her complaint with redacted information. However, the court failed to consider the chilling effect it created in its publicly accessible opinion and Dr. Smith's declaration about her depression and anxiety. Mem. Op. & Order p. 2 ("K.D. suffers from numerous mental health issues"); Dr. Evelyn Smith Decl. p. 1.

Despite K.D.'s sexual assault only appearing in her complaint, the court failed to consider that even if K.D. refiled her complaint, the public could still access her original complaint. *See* James W. Moore et al., Moore's Federal Practice, 15, 17 (3d ed. 1999) (discussing courts allowing the jury to view an original complaint *after* the plaintiff filed an amended complaint). Also, in response to K.D.'s concern about the revelation of her personal information, the court claimed she created this problem by not redacting at the outset of her case or filing her complaint under seal. Mem. Op. & Order p.7. But in stating K.D. *could* have done this the court failed to cite any case law requiring that she *should* have done this. *Id.*

Thus, the district court improperly weighed criteria relating to the sensitive and highly personal nature of K.D.'s circumstances because it failed to consider her sexual assault, mental illness, and her risk of social stigmatization.

C. The District Court Abused its Discretion by Improperly Weighing Criteria Concerning the Public's Interest in Disclosure.

The public can still view the issues, facts, and court's performance in a case when litigants proceed anonymously. *Stegall*, 653 F.2d at 185. Party identification aims to "facilitat[e] public scrutiny of judicial proceedings." *Sealed Plaintiff*, 537 F.3d at 187. Still, "it is difficult to see 'how disguising plaintiffs' identities will obstruct public scrutiny of the important issues in a case.'" *Doe v. Kamehameha Sch.*, 596 F.3d 1036, 1043 (9th Cir. 2010) (quoting *Does I thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1072 (9th Cir. 2000)).

K.D. tried to protect both her privacy and the public's interest in disclosure by filing her complaint under her initials. K.D. requested to remain anonymous and did not seek to file any of her medical documents under seal. By requesting anonymity, she advanced the public interest because she tried to ensure the public could access the facts and issues of her case. The lower court wanted to inhibit public access by permitting her to file her medical records under seal and a redacted version of her complaint. *See* Mem. Op. & Order p.7. If the lower court was so concerned about the public interest, its decision to allow her to redact information or file her complaint under seal contradicts this concern. Whereas K.D., requesting to proceed

anonymously instead of filing her complaint under seal furthers the public interest because anonymity does not remove facts or documents in her case from the public's knowledge.

Thus, considering K.D.'s risk of mental harm, the fairness of K.D. proceeding anonymously, Universal's status as a private party, and K.D.'s history of sexual assault and mental illness, the totality of the circumstances weigh in favor of protecting her privacy by granting anonymity.

II THE DISTRICT COURT ERRED AS A MATTER OF LAW BY FAILING TO APPLY THE *AMARA* FRAMEWORK REGARDING § 1132 CLAIMS FOR RELIEF AND SIMULTANEOUS CLAIMS FOR RELIEF.

When a beneficiary's access to care is wrongfully inhibited, ERISA provides remedies to restore that access. 29 U.S.C. § 1001(b). ERISA seeks to protect the interests of both participants and beneficiaries by "providing for appropriate remedies." *Id.* Two relevant provisions exist for beneficiaries bringing a civil action against insurance companies denying benefits and when insurance companies violate statutory provisions: § 1132(a)(1)(B) and § 1132(a)(3).

Section 1132(a)(1)(B) states a participant or beneficiary may bring a civil action "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). Section 1132(a)(3) allows participants and beneficiaries to file a civil action "(A) to enjoin any act or practice which violates

any provision of this subchapter [of ERISA] 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. § 1132(a)(3).

A motion to dismiss will not prevail if the complaint "contain[s] sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal,* 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). This Court reviews *de novo* the district court's grant of a motion to dismiss. *Sys. Council EM-3 v. AT&T Corp.*, 159 F.3d 1376, 1378 (D.C. Cir. 1998).

The district court failed to apply the Supreme Court's holding in *CIGNA v. Amara* when analyzing Count II and instead only relied on *Varity v. Howe*, an older case. Mem. Op. & Order p. 9. By not applying the Court's *Amara* analysis, the district court failed to consider more recent case law affecting the Court's holding in *Varity*. K.D. rightfully filed Count II to prevent Universal from continuing to violate the Mental Health Parity Act and, in turn, deny her future access to care. As explained in Count II, Universal violated Mental Health Parity Act by "applying a 'fail first' policy" within the act, "requiring" that K.D receive a lower level of care before she could receive residential care. Compl. p. 6. Without an injunction, the Universal guidelines will continue to inhibit K.D.'s access to care.

The district court erred as a matter of law by granting Universal's motion to dismiss Count II for two reasons. First, the district court failed to apply the *Amara* framework. The *Amara* framework analyzes claims under § 1132 and requires remedying statutory violations under § 1132(a)(3). Second, because the district court did not fully analyze the claim, it failed to find simultaneous claims are allowed under *Amara* and *Varity*. This Court should reverse and remand the district court's decision so it can properly determine the relevant relief for K.D.

A. The District Court Erred as a Matter of Law by Failing to Apply the *Amara* Framework Because the Mental Health Parity Violation Must be Remedied Under § 1132(a)(3).

The sections of §1132 must be read carefully. §1132(a)(1)(B) addresses relief under the terms of the Plan. Whereas §1132(a)(3) specifically includes relief to enjoin ERISA violations. Relief under Count II must be found under §1132(a)(3).

1. Count II cannot be analyzed under § 1132(a)(1)(B) because the relief under this section cannot remedy statutory violations.

A statutory violation is distinct from a Plan term violation. When analyzing whether a claim can proceed under § 1132(a)(1)(B), the Supreme Court will first determine if the claim invokes enforcement of the plan under § 1132(a)(1)(B). *CIGNA Corp. v. Amara*, 563 U.S. 421, 436 (2011). Plan summaries "do not themselves constitute the terms of the plan" and cannot be enforced or provide relief under § 1132(a)(1)(B). *Id.* at 437. Courts do not typically desire to leave plaintiffs without a remedy under ERISA and will look to § 1132(a)(3) if a plaintiff cannot

find relief under another subsection or if the plaintiff alleges a statutory violation. *Varity Corp. v. Howe,* 516 U.S. 489, 512-13 (1996). § 1132(a)(3) functions as a "catchall" provision, allowing plaintiffs to obtain equitable relief for ERISA violations. *Id.* at 512.

In the unanimous Supreme Court Decision, *CIGNA Corporation* v. *Amara,* the Court first ana determined whether a claim regarding a plan summary invoked the terms of the plan under § 1132(a)(1)(B). *Amara,* 563 U.S. at 436. The Court found that even plan summaries, which were about the plan, "d[id] not themselves constitute the *terms* of the plan for purposes of § [1132](a)(1)(B)." *Id.* at 437. Because the plan summaries did not invoke "the terms of the plan," remedies were unavailable under § 1132(a)(1)(B). *Id.* Yet the Court held "relief is authorized by § 502(a)(3)." *Id.* at 421. The Court vacated and remanded the lower court's decision "[b]ecause the District Court has not determined if an appropriate remedy may be imposed under § 502(a)(3)." *Id.* at 445.

Here, the district court improperly failed to first determine whether Count II invoked the Plan. K.D takes issue with the guidelines in Count II. The heading of Count II calls for relief to remedy violations of the Mental Health Parity Act and is distinguishable for relief under the Plan terms.

§1132(a)(1)(B) does not address violations of ERISA. §1132(a)(1)(B) solely addresses recovering benefits, enforcing rights, or clarifying rights, "*under the terms*

of the plan." §1132(a)(1)(B) (emphasis added). If K.D. filed a claim under §1132(a)(1)(B) she would be restricted to enforcing the Plan terms and the guideline would not be remedied because the guideline is separate from the Plan.

In Count II, K.D. explicitly states "the Plan does not apply" Universal's "fail first" guidelines. Compl. p. 7. In fact, K.D. invokes Universal's guidelines, "*despite* Plan terms." *Id.* (emphasis added). Thus, under Count II the Plan is not the problem.

Count II must be read holistically. If the request merely called for enforcement under the Plan terms, the claim would be duplicative—but this is not the case. The injunctive relief under Count II would halt the application of the guidelines and allow the acknowledged and already-existing benefits to be utilized. Moreover, in the first and final letters from Universal the guidelines, not the terms of the Plan, are the reason K.D. was ultimately denied access to treatment and sought relief from the court. Because Count II invokes relief outside of the terms of the Plan, this Court must look to §1132(a)(3) for relief.

2. Relief for Count II must be found solely under §1132(a)(3).

Relief under §1132(a)(3) includes enjoining ERISA violations or obtaining "appropriate equitable relief" to redress ERISA violations. Under *Amara,* an injunction under §1132(a)(3) constitutes equitable relief. *Amara,* 563 U.S. at 440. Equitable remedies typically are "directed against some specific thing" and "give or enforce a right to or over some particular thing" *Montanile v. Bd. Of Trs. of the Nat'l*

Elevator Indus. Health Benefit Plan, 577 U.S. 136, 145 (2016) (quoting 4 S. Symons, Pomeroy's Equity Jurisprudence § 1234, p. 694 (5th ed. 1941) (Pomeroy))). *Amara* explained "[e]quitable estoppel 'operates to place the person entitled to its benefit in the same position he would have been in had the representations been true.'" *Amara*, 563 U.S. at 441.

Count II explicitly requests an injunction "requiring Universal . . . to refrain from applying internal guidelines inconsistent with the parity provisions of ERISA" and "other appropriate equitable relief." Compl. p. 7. The requested injunction is not a recovery of monetary compensation for a denial of benefits. Even if Count I's request for clarification to enforce K.D.'s "rights to benefits under the terms of the Plan" prevailed, K.D. would still be at risk of denial of residential treatment because the guidelines would remain in effect. This Court should allow Count II to proceed so K.D. may obtain relief under § 1132(a)(3) be "in the same position [s]he would have been" if Universal had not violated the Mental Health Parity Act and inhibited her access to benefits. *Amara*, 563 U.S. at 441.

B. The District Court Erred as a Matter of Law by Not Allowing Simultaneous Claims for Relief Under Supreme Court Precedence and the Federal Rules of Civil Procedure.

When a plaintiff cannot find relief under § 1132(a)(1)(B) or § 1132(a)(2), the Supreme Court will look to see if a plaintiff can recover under another subsection. *Varity*, 516 U.S. at 512-13. A pleading must include "a demand for the relief sought,

which may include relief in the *alternative* or *different* types of relief." Fed. R. Civ. P. 8(a)(3) (emphasis added). However, a plaintiff cannot receive duplicative recoveries. *Silva v. Metro Life Ins. Co.*, 762 F.3d 711, 727 (8th Cir. 2014). Courts will typically not allow for an "impermissible repackaging" of claims attempting to gain a duplicative remedy. *Rochow v. Life Ins. Co. of N. Am.*, 780 F.3d 364, 373 (6th Cir. 2015). The stage of litigation affects whether a party can continue in the trial process with an alternative claim. *Silva*, 762 F.3d at 726-27.

The Supreme Court, in *Varity* and *Amara*, implicitly recognized a plaintiff's ability to bring an alternative claim. In *Varity*, the Court turned to § 1132(a)(3) after determining § 1132(a)(1)(B) could not provide an appropriate remedy for the plan recipient. *Varity*, 516 U.S. at 515.

Later in *Amara*, the Court again turned to § 1132(a)(3) after performing an analysis of the plan recipient's § 1132(a)(1)(B) claim. *Amara*, 563 U.S. at 438. In *Amara*, the Court looked to § 1132(a)(3), even though the district court did not look to that particular subsection for its holding. *Id.* at 438. The Court implicitly recognized that it could analyze two claims brought under two different subsections of § 1132, even when the district court did not look at one of the subsections in deciding an appropriate remedy. *Id.* Though in both cases the plan recipients could not find relief under § 1132(a)(1)(B), prompting the Court to turn to § 1132(a)(3),

the Court showed how it could analyze two claims, brought under both sections, at the same time.

The majority of circuits allow simultaneous claims for relief under § 1132 based on their understanding of *Varity* and *Amara*, permit alternative claims at the motion to dismiss stage of litigation. The Eighth Circuit allows beneficiaries to plead more than one claim under § 1132(a)(1)(B) and § 1132(a)(3). *Silva*, 762 F.3d at 726. In *Silva*, the Eighth Circuit highlighted how *Amara's* holding did not bar plaintiffs from a claim under § 1132(a)(3) merely because the plaintiffs already filed a claim under § 1132(a)(1)(B). *Id.* at 727. The Eighth Circuit noted plaintiffs could bring more than one claim for relief as long as they did not seek duplicative recoveries, even under the Supreme Court's holding in *Varity*. *Id.* at 726. Finally, the court concluded that alternative claims should be allowed at the motion to dismiss stage of litigation because claims have not had time to fully develop, and Federal Rule of Civil Procedure ("FRCP") 8 allows for a plaintiff to plead alternative claims for relief. *Id*.

The majority of circuits adopted the Eighth Circuit's reasoning. The Ninth Circuit explicitly agreed with the Eighth Circuit's findings regarding how *Amara* allows plaintiffs to bring two claims "without obtaining double recoveries." *Moyle v. Liberty Mut. Retired Benefit Plan*, 823 F.3d 948, 961 (9th Cir. 2016). In the Fourth Circuit, the court remanded the case to the district court to determine whether the

plaintiff could receive "equitable" relief under §1132(a)(3) after the court could not find monetary relief for the plaintiff under §1132(a)(1)(B). *Rose v. PSA Airlines, Inc.*, 80 F.4th 488, 493 (4th Cir. 2023). The Second Circuit explained dual claims must not be eliminated because a claim may be successful under both § 1132(a)(1)(B) and §1132(a)(3). *Devlin v. Empire Blue Cross & Blue Shield*, 274 F.3d 76, 89-90 (2d Cir. 2001). The Seventh Circuit also allows for alternative pleadings based on its interpretation of *Amara's* holding. *Dean v. Nat'l Product Workers Union Severance Trust Plan*, 46 F.4th 535, 544 (7th Cir. 2022).

Only a minority of circuits do not allow for alternative claims under § 1132, and their reasoning does not follow Supreme Court precedent. The district court relied on *Rochow* to argue that plaintiffs cannot seek "a duplicative or redundant remedy . . . to redress the same injury." *Rochow v. Life Ins. Co. of N. Am.*, 780 F.3d 364, 373 (6th Cir. 2015). However, *Rochow* involved a situation where § 1132(a)(1)(B) could make the claimant whole and where the court already decided in favor of the claimant in a previous case. *Id.* at 373. In *Rochow* the district court did not consider simultaneous or alternative claims at the motion to dismiss stage, but rather after a judgment had already been rendered. *Id.*

This court should follow the majority of circuits because they best apply Supreme Court precedent and follow FRCP 8. The minority of circuits, in disallowing simultaneous claims, even at later stages of litigation, fail to follow the

Supreme Court's framework established in both *Varity* and *Amara*. *But see Id.* In *Varity* and *Amara*, the Supreme Court analyzed both a claim under § 1132(a)(1)(B) and § 1132(a)(3). Notably, these analyses were not at the motion to dismiss stage but after litigation had already proceeded through the lower courts.

Under a minority approach, the Supreme Court's framework does not make sense. If alternative claims are not allowed, then the Supreme Court could not have analyzed claims under multiple subsections of § 1132, even when they stemmed from the same injury. By disallowing alternative claims, the circuit minority conflicts with *Varity* and *Amara*.

The district court did not allow for alternative claims at the motion to dismiss stage, conflicting with Supreme Court precedent and FRCP 8. In this case, the district court failed to follow the Supreme Court's frameworks in *Varity* and *Amara.* The Supreme Court, in both cases, analyzed simultaneous claims under § 1132(a)(1)(B) and § 1132(a)(3). The Court allowed for possible relief under § 1132(a)(3) only after performing a full analysis under § 1132(a)(1)(B). In this case, the district court did not fully analyze whether K.D. could succeed under § 1132(a)(1)(B) and did not allow K.D. to bring simultaneous claims for relief. As a result, the district court's decision failed to follow Supreme Court precedent.

Under FRCP 8(a)(3) plaintiffs are allowed to state "a demand for the relief sought, which may include relief in the *alternative* or *different* types of relief." Fed.

R. Civ. P. 8(a)(3) (emphasis added). By barring K.D. from pleading a claim for relief under § 1132(a)(1)(B) and under § 1132(a)(3) at the motion to dismiss stage, the court failed to follow FRCP 8 which plainly allows "alternative" or "different" relief. *Id.* Under FRCP 8 and Supreme Court precedent, this Court should follow the majority of circuits and allow K.D. to bring alternative claims for relief.

CONCLUSION

This court should reverse and remand the lower court's motions to dismiss because the totality of the circumstances warrant anonymity and the court failed to fully analyze Count II under *Amara*.

Respectfully submitted,

/*s*/ Team 9

Counsel for Appellants