CIVIL ACTION NO. 25-CV-101

IN THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Elinor Dashwood, Individually
and on Behalf of the Estate of Marianne Dashwood
and a Class of Others Similarly Situated,

Appellant,

v.

Willoughby Health Care Co.,
Willoughby RX,
and ABC Pharmacy, Inc.,

Appellees.

On Appeal from the United States District Court for the Eastern District of Tennessee

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BRIEF FOR APPELLEES

Team # 2
Counsel for Appellees
January 23, 2026

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II. Whether ERISA § 502(a)(3) allows for recovery of a surcharge and disgorgement of profits when the surcharge measures compensation by the claimant's injury and no specifically identifiable funds are requested.

STATEMENT OF THE CASE

I. Factual Background

Marianne Dashwood was a participant in a healthcare plan governed by the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 *et seq*. ("Plan"). (Dist. Ct. Op. at 2). Appellee Willoughby Health Insurance Co. ("Willoughby Health") is a nationwide health care insurance company and fully insures the health care plan. *Id*. Willoughby Health administers benefits under the plan and is expressly granted full discretionary authority to decide claims for benefits. *Id*. Willoughby Health administers benefits through its subsidiary, Appellee Willoughby RX, which is a pharmacy benefit manager ("PBM"). *Id*. Willoughby RX has developed and applies a "formulary" of preferred drugs in deciding prescription drug claims. *Id*. Appellee ABC Pharmacy is a nationwide pharmacy and a subsidiary of Willoughby RX. *Id*. at 3.

On December 1, 2024, Marianne Dashwood cut her leg and soon developed a serious infection. *Id*. The infection worsened and led to her hospitalization at Johnson City Hospital on December 5, 2024. *Id*. The treating medical team at the hospital determined that a drug-resistant and life-threatening staph infection, commonly referred to as MRSA, caused the infection. *Id*. Marianne remained at the hospital with an intravenous antibiotic, Vancomycin, for five days, and the hospital released her on December 10 with a five-day prescription for Vancomycin. *Id*.

Appellant Elinor Dashwood brought the prescription to the Johnson City ABC Pharmacy. *Id*. at 4. ABC pharmacy did not provide the Vancomycin but

instead gave a five-day supply of Bactrim. *Id*. Elinor asked the pharmacist about the change, and the pharmacist said Willoughby, Marianne's insurance company, switched the prescription to Bactrim. *Id*. The pharmacist did not specify whether she was referring to Willoughby Health Care, Willoughby RX, or both. *Id*. The pharmacist allegedly informed Elinor that Bactrim is the generic form of Vancomycin. *Id*. Elinor brought the prescription and gave it to her sister. *Id*.

Bactrim is not the generic form of Vancomycin. *Id*. Vancomycin is in a class of antibiotics called sulfonamides or sulfa drugs. *Id*. at 4. Unfortunately, Marianne Dashwood was allergic to sulfa drugs and suffered a severe allergic reaction to another sulfa drug prescribed to her in 2022. (First Am. Compl. ¶ 20). Dashwood's medical team at Johnson City Hospital was aware of this allergy; however, neither Willoughby Health Care, Willoughby RX, nor ABC Pharmacy had a policy requiring consultation with doctors before making drug substitutions. (Dist. Ct. Op. at 4).

Willougby RX, acting through ABC Pharmacy, routinely switches prescribed medications for what it deems to be similarly preferred drugs on its formulary without contacting the prescribing doctor. *Id*. The doctor will be contacted if a patient or prescribing doctor expressly objects. *Id*. Consistent with the policy, Willoughby RX and ABC Pharmacy switched Marianne's medication from Bactrim to Vancomycin. *Id*. Unfortunately, Marianne Dashwood suffered a severe allergic reaction to the Bactrim after taking it for just one day. *Id*. She sadly passed away in an ambulance on the way back to the hospital. *Id*.

II. Procedural History

Elinor Dashwood, as Executrix of Marianne's estate, sued Willoughby RX, Willoughby Healthcare, and ABC Pharmacy in the US District Court for the Eastern District of Tennessee. She asserted a Tennessee state-law wrongful death claim against Willoughby RX and ABC Pharmacy. Further, she alleged a federal claim for breach of fiduciary duty under ERISA Section 404 against Willoughby Health Care and Willoughby RX. This second claim is asserted on behalf of a class of similarly situated participants and beneficiaries, and Dashwood seeks, among other remedies, a surcharge and disgorgement of profits from the drug switching policy.

Under Federal Rule of Civil Procedure 12(b)(6), the Appellees filed a joint motion to dismiss. They asserted that ERISA preempts the state-law wrongful death claim and that the Appellant's ERISA claim fails because there is no available relief. The district court granted the Appellees' motion and dismissed the Appellant's claim with prejudice. Dashwood appealed to the United States Court of Appeals for the Sixth Circuit.

SUMMARY OF ARGUMENT

ERISA is designed to provide uniformity in the regulatory regime of employee benefit plans. Part of its regulatory regime includes a preemption clause to ensure only a single set of regulations governs the benefit plan. Claims are preempted when they affect plan administration, especially in the context of benefit determinations. The Appellant's wrongful death claim relies on a Tennessee law

that makes it illegal for a pharmacy or a pharmacy benefit manager ("PBM") to change prescribed medications without a treating physician's authority. This law relates to the Appellees' ability to follow the formulary process of determining drugs, which is part and parcel of their plan administration regarding benefit determinations. This Court has recognized that wrongful death claims arise from medical decisions regarding benefit determinations and, as a result, are preempted under ERISA.

Furthermore, ERISA provides an exclusive civil enforcement scheme, which does not include punitive damages. The Appellant's claim could have been brought under ERISA even though she is seeking a tort cause of action. The Appellant's claim is actually a dispute regarding the denial of Vancomycin under the decedent's Plan. It is a claim to enforce rights. Preemption is further revealed because, without this Plan, the Appellees had no independent legal duty. ABC Pharmacy, as a party in interest to the fiduciary Willoughby Health, did not negligently fill a prescription; it intentionally substituted it in accordance with the Plan's formulary policy. It is true that ERISA does not provide a remedy for wrongful death; however, it does provide the full range of remedies that Congress intended. The district court correctly recognized that the availability of an ERISA suit renders the state claim duplicative and, as a result, the claim is preempted.

Congress carefully designed ERISA's statutory remedial scheme to allow a plaintiff to recover benefits due and to allow courts to craft equitable remedies to enforce plans. Congress did not create this scheme to allow for broad, legal damage

awards. However, the Appellant seeks to turn ERISA into a vehicle for expansive compensatory damages by requesting an equitable surcharge measured by the decedent's losses rather than by the fiduciary's gain. The Supreme Court has reiterated and reinforced the concept that requests for equitable relief under ERISA § 502(a)(3) must be those typically available in equity. Compensatory damages of the kind that the Appellant seeks are legal, not equitable, in nature. Regardless of any phrasing the Appellant uses, her request for a surcharge to compensate for her direct financial harm is outside of the scope of relief permitted by ERISA. This Court has already held that a surcharge request of this nature does not qualify as permissible equitable relief.

Additionally, the Appellant's vague request for disgorgement of profits fails because she does not seek specifically available funds. Rather than follow the nuanced rules for disgorgement of profits, the Appellant asked for non-specific profits from the Willoughby Defendant's general assets. This claim must fail for several reasons. First, the Appellant traces to no specific or enumerated funds, but instead broadly and imprecisely asks for an award of overall profits. Second, she seeks funds from Willoughby Health Care based on profits supposedly held and retained by Willoughby RX. Third, the Appellant does not allege that these profits are even in Willoughby RX's possession. The district court correctly identified that the Appellant's sparse request fails to satisfy the requirements to claim disgorgement of profits under long-standing precedent.

ARGUMENT

I. The district court correctly dismissed the state-law wrongful death claim because ERISA preempts it.

The primary purpose of ERISA is "to provide a uniform regulatory regime over employee benefit plans." *Aetna Health Inc. v. Davila*, 542 U.S. 200, 204 (2004). Plan administrators would otherwise be forced to apply differing state subrogation laws that frustrate their obligation to calculate uniform benefit levels nationwide. *FMC Corp. v. Holliday*, 498 U.S. 52, 54 (1990). When a state regulation would introduce inefficiencies into the benefit program's operation, the court applies a preemption clause to ensure that only a single set of regulations governs the benefit plan. *Id*. ERISA is the most efficient way to meet the administrative responsibilities, as it provides a set of standard procedures to guide the processing of claims and the disbursement of benefits. *See Id*.

Since the Appellant is bringing suit under Tennessee law, this Court should affirm the lower court's opinion that this claim is preempted under ERISA Section 514(a) for three reasons. First, the Appellant's wrongful death claim "relates to" the administration of an ERISA plan because the Appellant's claim challenges a benefit determination. Second, the claim is preempted under the *Davila* standard because it seeks to supplement ERISA's exclusive civil enforcement scheme. Third, ABC Pharmacy's status as a non-fiduciary does not allow the claim to escape preemption.

A. The Appellant's wrongful death claim "relates to" the administration of an ERISA plan under § 514(a) because it challenges a benefit determination.

ERISA § 514(a) states that ERISA "shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan" that is covered by ERISA. 29 U.S.C. § 1144(a). The Supreme Court has consistently held that a law "relates to" an employee benefit plan if it has a "connection with or reference to" such a plan. *FMC Corp.*, 498 U.S. at 54. A state law claim has a "connection with" a plan if it "governs a central matter or plan administration" or "interferes with nationally uniform plan administration." *Rutledge v. Pharm. Care Mgmt. Ass'n*, 592 U.S. 80, 87 (2020). This Court should affirm the lower court's decision to dismiss Court I because wrongful death claims based on benefit denials are preempted, the medical malpractice exemption does not apply to benefit determinations, and the Appellants rely on a Tennessee law that regulates benefit structure.

1. Wrongful death claims based on benefit denials are preempted.

The appellant is attempting to bring suit under a state-law wrongful death claim, relying on a recent Tennessee law that makes it illegal for a pharmacy or a pharmacy benefit manager to change prescribed medications without a treating physician's authority. Tenn. Code Ann. § 63-1-202. However, this Court held in Tolton that wrongful death claims arising from a refusal to authorize benefits are preempted because they "relate to" the benefit plan. *Tolton v. Am. Biodyne*, 48 F.3d 937, 942 (6th Cir. 1995).

In *Tolton*, the plan administrator refused to authorize psychiatric benefits, which ultimately led to the patient's suicide. *Id*. at 940. The plaintiffs brought state law claims for wrongful death, improper refusal to authorize benefits, medical malpractice, and insurance bad faith. *Id*. This Court held that since the plaintiff's claims arose out of the refusal to authorize psychiatric services, the claims "clearly 'relate' to the benefit plan." *Id*. at 942.

In this case, the Appellant alleges that the Appellees' substitution of Bactrim for Vancomycin caused Marianne Dashwood's death. (Dist. Ct. Op. at 4). As the Complaint explicitly admits, the switch was not a random act. (Dist. Ct. Op. at 2). The lower court noted that the Appellant's allegations stem from how the plan was administered, namely, the PBM's refusal, pursuant to the terms of the Plan, to cover the prescribed medication, and Appellee Willoughby RX's development and application of a formulary of preferred drugs in deciding prescription drug claims, which is also pursuant to the terms of the Plan. (Dist. Ct. Op. at 10). Similar to *Tolton*, the Appellant is challenging a decision about which benefits the plan would authorize. Determining liability would require this Court to interpret the Plan's formulary process and the PBM's authority to administer it, and therefore, the claim "relates to" the benefit plan.

2. A medical decision regarding coverage is a benefit determination.

The Appellant will argue that the drug substitution was a medical malpractice event, not a plan administration decision. However, that argument fails because a medical decision made in the context of determining coverage is a benefit

determination for ERISA purposes. *See Corcoran v. United Healthcare*, 965 F.2d 1321, 1332 (5th Cir. 1992). The Fifth Circuit (cited approvingly by this Court in Tolton) held that when a plan administrator makes medical decisions, such as determining medical necessity, as part of its mandate to decide what the plan will pay for, it is making a benefit determination. *Id*. at 1332. The court explained that while these decisions do involve medical judgment, they are "part and parcel" of plan administration and thus preempted. *Id*.

In *Corcoran v. United Healthcare, Inc.,* a pregnant beneficiary of an ERISA-governed medical plan administered by Blue Cross and United HealthCare went to her obstetrician, who recommended hospitalization for continuous fetal monitoring. *Id*. at 1323. However, United Healthcare denied pre-certification for hospitalization and instead approved 10 hours of daily home nursing care. *Id*. at 1324. The plaintiff returned home, and during a period without nursing care, the fetus died. *Id*. The plaintiffs filed a wrongful death action alleging negligence by Blue Cross and United Healthcare. *Id*. In deciding that the cause of action did "relate to" the benefit plan, the Fifth Circuit explained that while imposing liability on United might deter poor quality medical decisions, there is a "significant risk that state liability rules would be applied differently to the conduct of utilization review companies in different states." *Id*. at 1333. Ultimately, complying with the various substantive standards would increase costs to health benefit plans and thereby decrease the pool of plan funds available to reimburse participants. *Id*.

In this case, the Appellees made the medical decision to switch Bactrim to Vancomycin under the Plan's administration, in accordance with the company's formulary process for changing drugs. In both this case and *Corcoran*, a PBM makes a medical decision based on plan administration. In both cases, the plaintiffs are attempting to recover for a state tort arising from that benefit determination. *Id*. As the Fifth Circuit noted, "the principle that ERISA pre-empts state-law claims alleging improper handling of benefit claims is broad enough to cover the cause of action asserted here." *Id*. at 1332.

3. This claim is preempted because it regulates benefit structure, not just cost.

The Supreme Court recently held in *Rutledge v. Pharm. Care Mgmt. Ass'n*, that a state law that merely affects cost is not necessarily preempted under ERISA. *Rutledge*, 592 U.S. at 87. In *Rutledge*, the Court ruled that ERISA did not preempt an Arkansas law that merely regulated pharmacies' reimbursement rates. The Court further clarified that ERISA "does not pre-empt state rate regulations that merely increase costs or alter incentives for ERISA plans without forcing plans to adopt any particular scheme of substantive coverage." *Id*.

The Appellant presents the issue as a mere price question; however, the Appellant relies on Tennessee Code § 63-1-202, which goes far beyond cost regulation. The law affects benefit structure by restricting when a PBM can substitute drugs; this regulation dictates which drugs the Plan must cover and dispense. Tenn. Code Ann. 63-1-202. In *Rutledge,* the PBM could still decide which drugs to cover; the state just regulated the price. *Id.* The Tennessee law requires

the Plan to provide a specific benefit, such as the prescribed Vancomycin, even if the Plan design specifies a different one, such as the substituted Bactrim. Unlike the rate regulation in *Rutledge,* this law forces the plan to alter its design and formulary administration.

In conclusion, the Supreme Court remained firm in its *Rutledge* holding that state laws that "require providers to structure benefit plans in particular ways" remain preempted. *Id*. at 87. Count 1 should be dismissed because it "relates to" the administration of an ERISA plan under § 514(a) by challenging a benefit determination.

B. The claim is preempted because it seeks to supplement ERISA's exclusive civil enforcement scheme.

Even if this Court ruled that this claim is not expressly preempted under § 514(a), Count I is still preempted under ERISA 502(a) because the Appellants are seeking punitive damages against corporate entities related to the plan's insurer and administrator based on an alleged mishandling of pharmacy benefits under the Plan. ERISA allows for a plaintiff "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). The Supreme Court stated in *Aetna Health Inc. v. Davila* that "any state-law cause of action that duplicates, supplements, or supplants the ERISA civil enforcement remedy conflicts with the clear congressional intent to make the ERISA remedy exclusive and is therefore pre-empted." *Davila*, 542 U.S. at 209. This Court should

affirm the lower court's decision because the Appellant's claim satisfies the test outlined in *Davila* and because the lack of a remedy does not preclude preemption.

1. The Appellant's claim could have been brought under ERISA and is based on no independent legal duty.

In *Davila*, the Supreme Court addressed a set of facts remarkably similar to this case. Juan Davila was a participant in an Aetna-administered ERISA-regulated plan. *Davila*, 542 U.S. at 204. He brought suit under a state-law cause of action after being denied coverage for a prescribed medication and suffering adverse health effects from an alternative medication. *Id.* at 205. The Court ultimately held that the cause of action were pre-empted entirely, and in doing so, set out a two-prong test to determine if a claim falls under ERISA and is thus completely preempted: (1) if an individual, at some point in time, could have brought his claim under ERISA § 502(a)(1)(B), and (2) where there is no other independent legal duty that is implicated by a defendant's actions. *Id.* at 204, 210.

Under prong one, the Appellant could have brought a claim under ERISA 502(a)(1)(B) to "recover benefits due to him under the terms of his plan." *Turner v. Fallon Cmty. Health Plan*, 127 F.3d 196, 198 (1st Cir. 1997). While the Appellant seeks tort damages, her dispute is actually a denial of the entitlement to Vancomycin under the Plan. (Dist. Ct. Op. at 10). This is a claim to enforce rights under the Plan's terms, which falls within § 502(a)(1)(B). 29 U.S.C. § 1132(a)(1)(B).

Under prong two, there is no independent legal duty because the Appellees' duty to fill the prescription arose only because Dashwood participated in the Plan. ABC Pharmacy did not negligently fill a prescription; it intentionally substituted it

in accordance with the Plan's formulary policy. As in *Davila*, "if a managed care entity correctly concluded that, under the terms of the relevant plan, a particular treatment was not covered," it would not be liable under state law. *Id*. at 213. The duty to dispense is derived entirely from the ERISA plan. The Court cannot determine if the Appellees were wrong without interpreting the Plan's rules on substitution. Since the Appellant has failed to show that her claim could not have been brought under ERISA and that there was an independent duty from the Appellees, Count I should be preempted.

2. **The Lack of an ERISA remedy for wrongful death does not preclude preemption.**

The Appellant argues that preemption is unjust because ERISA does not provide a remedy for wrongful death. However, this Court stated in Tolton that even though "ERISA does not provide the full range of remedies available under state law," the lack of state remedies does not undermine ERISA preemption. *Tolton*, 48 F.3d at 943 (6th Cir. 1995). This Court went on to note that a "consequence of ERISA preemption, therefore, is that plan beneficiaries or participants bringing certain types of state actions--such as wrongful death--may be left without a meaningful remedy." *Id*.

The Supreme Court explained that the limited remedies in ERISA § 502(a) are part of a "carefully integrated civil enforcement scheme" that Congress intended to be exclusive. *Davila*, 542 U.S. at 209. As this Court noted in *Tolton*, permitting an Appellant to bring a state-tort cause of action would completely undermine the federal scheme by exposing health care plans to the very conflicting state laws and

varying liability standards that ERISA was designed to prevent. *Tolton*, 48 F.3d at 943. The Appellant's argument that preemption creates a "right without a remedy" is a policy complaint properly directed at Congress, not this Court. Until Congress amends the statute, this Court is bound by ERISA's exclusive enforcement regime.

C. ABC Pharmacy's status as a non-fiduciary does not allow the claim to escape preemption.

The Appellant argues that ABC Pharmacy is not a fiduciary and, as a result, state law is the only remedy, since ERISA provides none. However, in *Harris Trust,* the Supreme Court held that ERISA § 502(a)(3) authorizes suits against non-fiduciaries who are "parties in interest" to a fiduciary breach. *Harris Trust and Sav. Bank v. Salomon Smith Barney, Inc.*, 530 U.S. 238, 241 (2000). In ERISA § 3(14), Congress defined "party in interest" to include any person providing services to the plan as well as a corporation that is a subsidiary of, or controlled by, a plan fiduciary. 29 U.S.C. § 1002(14).

ABC Pharmacy, a PBM subsidiary, participated in the formulary switch, so it falls within ERISA. (Dist. Ct. Op. at 2-3). Furthermore, the Amended Complaint alleges that ABC Pharmacy participated in Willougby RX's formulary process to switch the drugs. (First Am. Compl. ¶ 22). Following the logic of the complaint, ABC Pharmacy implemented the PBM's formulary policy, which it alleges constituted a fiduciary breach. As a result, ABC Pharmacy became a participant in that alleged breach and is a "party in interest." Thus, there is a federal cause of action that exists under ERISA § 502(A)(2) to address ABC Pharmacy's conduct. The district

court correctly recognized that the availability of this federal avenue renders the state claim duplicative, and the claim is further preempted.

II. The district court correctly ruled that the Appellant failed to state a claim under ERISA § 503(a)(3) because she failed to request an appropriate remedy.

The second legal issue presented in this case is whether the Appellant has sought remedies available under ERISA Section 502(a)(3). Section 502(a)(3) allows a plan participant to "(A) enjoin any act or practice which violates any provision of this title 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 title or the terms of the plan." 29 U.S.C. § 1132(a)(3). The "appropriate equitable relief" referenced in Section 502(a)(3)(B) has been described as a "catchall" provision which offers equitable relief for violations which Section 502 otherwise would not adequately remedy. See *Varity Corp. v. Howe*, 516 U.S. 489, 512 (1996).

The Supreme Court has interpreted "'equitable relief' to include only those types of relief that were typically available in equity." *Mertens v. Hewitt Assocs.*, 508 U.S. 248, 256 (1993). Further, in *Aldridge v. Regions Bk.*, this Court held that the types of relief typically available in equity did not include all remedies that equity courts could provide in trust cases. 144 F.4th 828, 846 (6th Cir. 2025).

Further, the Supreme Court explicitly concluded that the statutory text of Section 502(a)(3) does create a right of action for compensatory relief. See *Mass. Mut. Life Ins. Co. v. Russell*, 473 U.S. 134, 144 (1985). Additionally, as noted in *Mertens*, the power of courts to develop the common law does not allow it to revise

statutory text. 508 U.S. 248, 259 (1993). Thus, a plaintiff suing for a fiduciary breach under the umbrella of "appropriate equitable relief" must plead relief typically available in equity.

However, the Appellant has not sought appropriate equitable relief, and, thus, the district court's decision should be affirmed. In their complaint, the Appellant requested relief in the form of (1) an equitable surcharge for direct financial harm suffered by the Appellant, and (2) disgorgement of profits Willoughby Health Care and Willoughby RX gained through its drug switching program.

Under the Appellant's theory of relief, she seeks to transform ERISA's equitable scheme into a means for broad legal, compensatory damages which Congress never intended. Both of Appellant's forms of requested relief are inappropriate under Section 502(a)(3). First, the Appellant's "equitable" surcharge request is one for compensatory damages. Second, the Appellant's disgorgement of profits claim fails as a request for equitable relief because the Appellant does not identify specifically identifiable funds.

A. The Appellant's "equitable surcharge" does not qualify as equitable relief under ERISA § 502(a)(3) because it is a request for compensatory damages.

The distinction between equitable and legal damages dates back to the days of the "divided bench," when courts of law and courts of equity were separate. *Rose v. PSA Airlines, Inc.*, 80 F.4th 488, 497 (4th Cir. 2023). Different remedies were available for each court: legal and equitable, respectively. *Id.* Over time, many legal

and equitable courts merged, but the distinction between legal and equitable remedies remains. *Id.*

The quintessential legal remedy is compensatory damages. Compensatory damages are an award of money "ordered to be paid to . . . a person as compensation for loss or injury." *Damages*, Black's Law Dictionary (11th ed. 2019). In the context of the present dispute, compensatory damages would be an award of monetary relief for the losses a plaintiff sustained "as a result of the alleged breach of fiduciary duties." *Mertens*, 508 U.S. at 255 (1993).

In the present case, the Appellant has clearly requested compensatory damages. In the Appellant's Amended Complaint, she asserts supposed equitable relief surcharging the Willoughby Defendants for the direct financial harm suffered by Marianne because of the alleged breach of their fiduciary duties. (First Am. Compl. p. 10). This requested relief is clearly compensatory in nature because she demands compensation measured by the loss or injury sustained by the injured party. Thus, this requested relief is legal, not equitable, in nature and, therefore, impermissible as a basis for relief under Section 502(a)(3).

The Appellant tries to dodge this distinction by re-labeling her request for compensatory damages as an "equitable surcharge." However, in *Aldridge*, this court addressed the Appellant's exact argument holding that "surcharge and damages are 'essentially' equivalent because they describe the same concept: monetary relief that a legal or equity court would grant to compensate a plaintiff for the losses that the defendant caused" 144 F.4th at 848 (2025). Thus, although the

Appellant has requested a "surcharge" in name, the Appellant has not changed the inherent nature of her request for compensatory damages.

B. The Appellant's disgorgement theory fails because she did not seek specifically identifiable funds.

Unlike the Appellant's requested "surcharge", disgorgement of profits is a form of restitutionary relief which focuses on the wrongdoer's gain rather than the injured party's loss. Restatements of the Law 3d, Restitution and Unjust Enrichment, § 3. However, "the generic 'restitution' remedy can qualify as either legal or equitable. *Aldridge*, 144 F.4th at 846 (6th Cir. 2025). Lawsuits seeking "to compel the defendant to pay a sum of money to the plaintiff are suits for 'money damages,' as that phrase has traditionally been applied, since they seek no more than compensation for loss resulting from the defendant's breach of legal duty. *Bowen v. Massachusetts*, 487 U.S. 879, 918-19, (1988). These claims are considered legal in nature. *Aldridge*, 144 F.4th at 846 (6th Cir. 2025).

Further, *Aldridge* makes clear that when a party seeks monetary damages as restitution under ERISA § 502(a)(3), the party must seek specific funds in the other party's possession, not from its general assets. See *Id.* A plaintiff may seek "restitution in equity" for the plaintiff's money or property if it "could clearly be traced to particular funds or property in the defendant's possession." *Great West Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 213 (2002).

Here, the Appellant failed to identify specific funds. Rather, she seeks a judgment for money damages from Willoughby RX's general assets. In her First Amended Complaint, the Appellant seeks a generalized disgorgement of all

amounts by which the Willoughby Defendants profited through the program. (Dist. Ct. Op. at 5-6). The Appellant identifies no specific funds, particular account, or amount. By seeking the alleged savings from the program, the Appellant seeks non-specific, unbounded sums of money. In the absence of tracing to an identifiable fund or property, the Appellant has sought legal restitution in the form of money damages. Therefore, the Appellant has not requested appropriate equitable relief under ERISA § 502(a)(3).

Additionally, the Appellant seeks payments from Willoughby Health Care out of savings that were directed to Willoughby RX. In *Montanile v. Bd. of Trs. of the Nat'l Elevator Indus. Health Ben. Plan*, the Supreme Court held that restitution is legal, not equitable, when the plaintiff claimed an entitlement that was not in the defendant's possession. 577 U.S. 136, 143 (2016). Here, Appellant sought legal restitution through disgorgement because she requested funds not in Willoughby Health Care's possession. This fact alone forecloses the possibility of equitable relief from Willoughby Health Care, as the savings or profits flowing from the program are in Willoughby RX's possession, not in Willoughby Health Care's possession.

Lastly, the Appellant failed to allege that the profits gained through the drug switching program are still in Willoughby RX's possession. The Supreme Court held in *Great-West* that when seeking money through restitution in equity, the plaintiff must be able to trace the funds to the defendant's possession. 534 U.S. at 213, 122 (2002). Further, if the funds sought are dissipated and no longer in a defendant's possession, a plaintiff may not claim entitlement to them under a theory of

equitable restitution. *Id*. at 213. The Appellant has ignored this crucial element of her disgorgement claim, making no mention of whether the profits from the drug-switching program have been dissipated. Thus, any claim for these funds would not lie in equity, but rather on the legal side of the law-equity divide. See *Id.* For these reasons, the Appellant's request for disgorgement fails because she requested non-specific funds, which may no longer be in Willoughby RX's possession.

CONCLUSION

In recognition of precedent, this Court should affirm the district court for the Eastern District of Tennessee's order dismissing the case with prejudice.

/s/ Team 2
Counsel for Appellee