

ORAL ARGUMENT SCHEDULED FOR MARCH 6, 2026

No. 25-CV-101
Civil Action

**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.,

Appellee,

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

BRIEF FOR APPELLEE

TEAM 10

Attorneys for Appellees

January 23, 2026

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JURISDICTIONAL STATEMENT

This action was brought under the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1001 *et seq.*, and Tennessee state law. The United States District Court for the Eastern District of Tennessee had subject-matter jurisdiction pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 1132(e)(1) because the action presented federal questions arising under ERISA. The district court also exercised supplemental jurisdiction over Ms. Dashwood’s related state-law wrongful death claim pursuant to 28 U.S.C. § 1367(a).

The district court entered a final judgment dismissing all claims with prejudice. Ms. Dashwood timely filed a notice of appeal. This Court has appellate jurisdiction under 28 U.S.C. § 1291 because the appeal is taken from a final judgment that disposed of all claims as to all parties.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

- I. Whether ERISA’s express preemption provision and exclusive enforcement scheme bar a state-law wrongful death claim seeking compensatory and punitive damages based on a pharmacy benefit manager’s substitution of a formulary drug under an ERISA-governed plan.
- II. Whether ERISA’s remedial scheme prevents an ERISA plan participant from obtaining monetary relief in the form of surcharge or disgorgement, where the relief sought is drawn from a fiduciary’s general assets and was not typically available in premerger equity courts.

STATEMENT OF THE CASE

This appeal concerns whether ERISA preempts a state-law wrongful death claim arising from the administration of prescription drug benefits and whether ERISA authorizes the monetary relief sought for an alleged breach of fiduciary duty.

Elinor Dashwood, as executor of the Estate of her sister, Marianne Dashwood, brought this action following Marianne's death after a pharmacy dispensed a substituted prescription medication. Compl. ¶¶ 1, 12. Dist. Ct. Op. at 4–5. Elinor asserted a wrongful death claim under Tennessee law and a federal claim for breach of fiduciary duty under ERISA against Marianne's health insurer, its pharmacy benefit manager ("PBM"), and an affiliated pharmacy. Compl. ¶¶ 3–5, 35–37, 40–43.

The district court dismissed both claims with prejudice under Federal Rule of Civil Procedure 12(b)(6), concluding that ERISA preempted the wrongful death claim and that the relief sought under ERISA § 502(a)(3) was unavailable as a matter of law. Dist. Ct. Op. at 1, 11, 15.

At the time of her death, Marianne Dashwood was a participant in the Cottage Press Healthcare Plan (the "Plan"), an employee welfare benefit plan governed by ERISA. Compl. ¶ 9; Dist. Ct. Op. at 2. The Plan was sponsored by

Marianne’s multi-state employer and insured by Willoughby Health Care Co. (“Willoughby Health”), which possessed discretionary authority to interpret Plan terms and decide benefit claims. Compl. ¶ 10, 11; Dist. Ct. Op. at 2. Under the Plan’s Summary Plan Description (“SPD”), the Plan covered medically necessary prescription drugs, subject to applicable cost-sharing requirements. *Id.*

Willoughby Health delegated responsibility for administering prescription drug benefits to its subsidiary, Willoughby RX, a PBM that developed and applied a formulary of covered medications. Compl. ¶¶ 11, 14; Dist. Ct. Op. at 2. ABC Pharmacy, a nationwide retail pharmacy affiliated with Willoughby RX, dispensed prescription medications to Plan participants. Compl. ¶ 15; Dist. Ct. Op. at 2–3. Willoughby Health and Willoughby RX are fiduciaries of the Plan within the meaning of ERISA. Compl. ¶ 13, 14; Dist. Ct. Op. at 11 n.5.

Following a hospitalization in December 2024, Marianne was prescribed vancomycin. Compl. ¶ 17; Dist. Ct. Op. at 3. When the prescription was filled at an ABC Pharmacy location, the pharmacy dispensed Bactrim instead. Compl. ¶ 18; Dist. Ct. Op. at 3. The substitution occurred without consulting Marianne’s prescribing physician and pursuant to the administration of the Plan’s prescription drug benefits. Compl. ¶ 19, 22; Dist. Ct. Op. at 3–4.

Vancomycin and Bactrim are not therapeutically equivalent, and Marianne had a documented allergy to sulfa drugs, including Bactrim. Compl. ¶ 20–21; Dist. Ct. Op. at 4. After taking the substituted medication, Marianne suffered a severe allergic reaction and died. Compl. ¶ 23; Dist. Ct. Op. at 4.

Elinor filed this action on May 14, 2025. Compl. at 1, 11. Count I asserted a wrongful death claim under Tennessee law against Willoughby RX and ABC Pharmacy, alleging that Defendants violated Tenn. Code § 63-1-202 by substituting medication without physician authorization. Compl. ¶¶ 35–37; Dist. Ct. Op. at 5. Elinor sought compensatory and punitive damages. Compl. 10; Dist. Ct. Op. at 5.

Count II asserted a claim against Willoughby Health and Willoughby RX for breach of fiduciary duty under ERISA, alleging that Defendants administered the Plan’s prescription drug benefits in a manner that prioritized cost over participant safety. Compl. ¶¶ 39–43; Dist. Ct. Op. at 5. Elinor sought equitable relief under ERISA § 502(a)(3), including surcharge and disgorgement. Compl. at 10; Dist. Ct. Op. at 5–6.

The district court granted Defendants’ motion to dismiss, concluding that ERISA preempted the wrongful death claim and that the relief sought under

ERISA was unavailable as a matter of law. Dist. Ct. Op. at 1, 11, 15. The court dismissed the action with prejudice, and Elinor now appeals. *Id.* at 1, 10, 15.

SUMMARY OF THE ARGUMENT

ERISA establishes a uniform federal framework governing employee benefit plans and a comprehensive enforcement scheme for disputes arising from plan administration. Because Ms. Dashwood's claims arise from the administration of prescription drug benefits under an ERISA-governed plan, both fail as a matter of law, and this Court should affirm the district court's dismissal.

First, ERISA preempts Ms. Dashwood's Tennessee wrongful death claim. Count I challenges a formulary-based drug substitution made pursuant to the Plan's prescription drug benefit design and administered by Willoughby RX as a delegated fiduciary. Imposing state-law tort liability for that benefit administration would regulate a central matter of ERISA plan administration and subject multi-state plans to inconsistent state standards, a burden ERISA preemption was designed to prevent. Nonetheless, Count I is also precluded because it seeks to use state law to obtain remedies that Congress deliberately excluded from ERISA's exclusive civil enforcement scheme. Ms. Dashwood's request for compensatory and punitive damages is an archetypal attempt to supplement ERISA's remedial framework through an alternative enforcement vehicle, which *Davila* forbids.

Second, even where Ms. Dashwood pleads an ERISA claim directly, the relief she seeks is unavailable, as neither the surcharge nor the disgorgement sought by Ms. Dashwood constitutes “appropriate equitable relief” under ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3). The Supreme Court’s decision in *Mertens* and this Court’s decision in *Aldridge* explicitly hold that a surcharge is not an appropriate form of equitable relief and is unrecoverable under § 502(a)(3). The monetary restitution that Ms. Dashwood seeks through the disgorgement of profits is not an appropriate form of equitable relief either, as the Supreme Court’s decisions in *Knudson*, *Sereboff*, and *Montanile* explicitly hold that § 502(a)(3) precludes monetary restitution against a defendant’s general assets.

For these reasons, this Court should affirm the district court’s judgment in full.

ARGUMENT

This Court reviews *de novo* a district court’s dismissal under Federal Rule of Civil Procedure 12(b)(6), applying the same standard as the district court and affirming on any basis supported by the record. *Elec. Merchant Sys. LLC v. Gaal*, 58 F.4th 877, 882 (6th Cir. 2023); *Smith v. Kentucky*, 36 F.4th 671, 674 (6th Cir. 2022).

Congress enacted ERISA to establish a comprehensive and uniform federal framework governing employee benefit plans, replacing a patchwork of state

regulations with a single national regime. *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 137 (1990). ERISA reflects Congress's judgment that predictable rules and centralized oversight are necessary to ensure efficient plan administration, particularly for plans with interstate operations. *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 46 (1987). That uniformity, in turn, encourages employers to establish and maintain benefit plans for their employees. *Egelhoff v. Egelhoff*, 532 U.S. 141, 148 (2001). To that end, ERISA establishes an integrated scheme governing fiduciary obligations and participant remedies, and vests federal law with enforcement responsibility to best serve plan sponsors and participants. *See* 29 U.S.C. § 1001; *Ingersoll-Rand*, 498 U.S. at 137–38.

These claims arise from the administration of an ERISA-governed employee welfare benefit plan, and the material facts are undisputed. *See* 29 U.S.C. § 1002(1); Compl. ¶ 9, 11. The Plan provides prescription drug benefits subject to a formulary, which Willoughby RX administers in its capacity as a delegated ERISA fiduciary, and the challenged substitution occurred within the scope of that administration. Compl. ¶ 11, 14.

Because the conduct at issue concerns benefit delivery, both claims turn on the application of ERISA provisions and fail as a matter of law. First, Ms. Dashwood's state-law wrongful death claim is preempted because it challenges the administration of benefits under an ERISA-governed plan and seeks remedies—

compensatory and punitive damages—that Congress deliberately excluded from ERISA's exclusive enforcement scheme. Second, her fiduciary breach claim under ERISA § 502(a)(3) fails because the monetary relief she seeks does not qualify as "appropriate equitable relief" within the meaning of the statute. The district court correctly dismissed both claims with prejudice, and this Court should affirm.

I. ERISA preempts Ms. Dashwood's wrongful death claim because it challenges an ERISA-governed plan's benefit administration and seeks remedies unavailable under federal law.

Whether ERISA preempts a state-law claim is a question of law this Court reviews *de novo*. *Self-Ins. Inst. of Am., Inc. v. Snyder*, 827 F.3d 549, 554 (6th Cir. 2016).

Two preliminary points narrow the scope of Count I on appeal. Ms. Dashwood did not invoke ERISA's savings clause, and the district court did not consider it. *See* 29 U.S.C. § 1144(b)(2)(A); Dist. Ct. Op. at 6–7 n.3. The clause does not apply because Tennessee Code § 63-1-202 regulates pharmacy dispensing practices rather than the business of insurance. *See Ky. Ass'n of Health Plans, Inc. v. Miller*, 538 U.S. 329, 338 (2003) (a state law "regulates insurance" only if it substantially affects the risk pooling arrangement between insurer and insured).

Ms. Dashwood likewise does not dispute that the prescription drug substitution giving rise to her claim occurred pursuant to the Plan's formulary policy, administered by Willoughby RX in its capacity as a delegated ERISA

fiduciary. Compl. ¶ 14, 22. The conduct challenged in Count I thus arose from the administration of prescription drug benefits under the Plan.

Thus, the only Count I inquiry is whether ERISA preempts Ms. Dashwood's wrongful death claim. It does for two separate reasons. First, the claim has a "connection with" the Plan under § 514(a) because it targets how prescription drug benefits are administered and would require plan fiduciaries to conform benefit delivery procedures to state-law standards. Second, the claim is conflict-preempted because it seeks compensatory and punitive damages, remedies Congress deliberately excluded from ERISA's civil enforcement scheme. Either ground requires this Court to affirm the district court's dismissal of Count I.

A. Ms. Dashwood's claim impermissibly "relates to" the Plan because it directly targets the administration of prescription drug benefits governed by the Plan's terms.

Ms. Dashwood's wrongful death claim is expressly preempted by ERISA § 514(a) because it has a prohibited "connection with" the Plan. The claim arises from the administration of prescription drug benefits under Plan terms and would require plan fiduciaries to conform benefit delivery to state-law standards Congress chose to displace.

ERISA preempts state laws that "relate to" an employee benefit plan, including those that have a "connection with" plan administration. 29 U.S.C. § 1144(a); *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 96–97 (1983). The

“connection with” inquiry examines ERISA’s objectives and the effect of the state law on ERISA plans. *Rutledge v. Pharm. Care Mgmt. Ass’n*, 592 U.S. 80, 87 (2020). A state law has a prohibited connection when it governs a central matter of plan administration or interferes with nationally uniform plan administration. *Gobeille v. Liberty Mut. Ins. Co.*, 577 U.S. 312, 320 (2016); *Egelhoff*, 532 U.S. at 148. State laws that dictate how benefits must be administered or require fiduciaries to conform benefit structures to varying state standards are preempted, while laws that merely exert indirect economic influence on plan choices are not. *Rutledge*, 592 U.S. at 91, 93–94; *N.Y. State Conf. of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 659 (1995). ERISA preemption serves Congress’s objective of ensuring that benefit plans, particularly multi-state ones, operate under predictable, uniform federal rules rather than a mélange of state regulation. *FMC Corp. v. Holliday*, 498 U.S. 52, 58 (1990).

Ms. Dashwood’s claim satisfies both considerations. Her theory that the Willoughby Defendants acted unlawfully by substituting a formulary medication without physician authorization challenges how prescription drug benefits were delivered under the Plan, including formulary design, substitution rules, and the fiduciary application of those terms to benefit claims. The substitution occurred pursuant to the Plan’s formulary policy, administered by Willoughby RX in its capacity as a delegated ERISA fiduciary. Compl. ¶¶ 14, 22. Evaluating this claim

thus requires the court to assess the Plan's coverage structure, substitution procedures, and whether Willoughby RX properly applied those terms, an inquiry ERISA reserves to federal governance. *Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1, 9 (1987).

Courts consistently hold that decisions involving medical judgment constitute plan administration when made in the course of benefit determinations. *See, e.g., Hogan v. Jacobson*, 823 F.3d 872, 882–83 (6th Cir. 2016) (state-law claim preempted where duty arose solely from plan-required benefits review); *Tolton v. Am. Biodyne, Inc.*, 48 F.3d 937, 942 (6th Cir. 1995) (wrongful death claim arising from refusal to authorize benefits preempted). Other circuits have reached the same conclusion where plaintiffs sought to impose tort liability based on utilization review or precertification decisions. *See Spain v. Aetna Life Ins. Co.*, 11 F.3d 129, 131–32 (9th Cir. 1993) (wrongful death claim preempted as directly relating to benefit administration).

In *Corcoran v. United HealthCare, Inc.*, the Fifth Circuit held that a wrongful death claim arising from a utilization review decision was preempted because, although the administrator exercised medical judgment, it did so only to determine the availability of benefits under the plan. 965 F.2d 1321, 1331 (5th Cir. 1992). The Supreme Court later confirmed this principle in *Aetna Health Inc. v. Davila*, holding that "benefit determination[s] . . . infused with medical judgments"

remain fiduciary acts governed exclusively by ERISA. 542 U.S. 200, 218–19 (2004). Where, as here, the relationship between the plaintiff and the defendant exists solely because of the plan, any potential liability "derives entirely from the particular rights and obligations" the plan establishes. *Id.* at 213.

Here, as in *Corcoran* and *Davila*, the alleged wrongdoing consists entirely of a benefit determination made according to plan terms and in the exercise of fiduciary discretion. Willoughby RX substituted Marianne Dashwood's medication pursuant to the Plan's formulary and under its discretionary authority as a delegated ERISA fiduciary. Compl. ¶¶ 11, 14, 22. Ms. Dashwood's claim, therefore, challenges how prescription drug benefits were administered under the Plan, not conduct independent of plan administration.

Courts have also recognized that state regulation of PBM formulary administration targets a central matter of plan administration. In *Pharm. Care Mgmt. Ass'n v. Gerhart*, the Eighth Circuit held that an Iowa statute regulating PBM practices was preempted because it imposed requirements governing the management and administration of ERISA benefits and created the prospect of conflicting state standards. 852 F.3d 722, 729–30 (8th Cir. 2017). Tennessee Code § 63-1-202 operates similarly by imposing a physician authorization requirement not found in the Plan, thereby regulating how plan benefits are delivered.

ERISA already provides a comprehensive federal framework for benefit determinations involving medical judgment, including notice, review, appeal procedures, and consultation with “an appropriate health care professional.” 29 U.S.C. § 1133; 29 C.F.R. § 2560.503-1(h)(3)(iii). Allowing Tennessee to impose an additional state-specific authorization mandate would require plan administrators to comply with parallel, potentially conflicting regulatory regimes. ERISA forecloses that result by reserving benefit administration to a uniform federal scheme, rather than one in which fiduciaries must “master the relevant laws of 50 States and . . . contend with litigation” as a result. *Egelhoff*, 532 U.S. at 149–50 (quoting *Ingersoll-Rand*, 498 U.S. at 142). See also *Gobeille*, 577 U.S. at 323 (preemption prevents “novel, inconsistent, and burdensome” state requirements on ERISA plan administration).

On the other hand, state laws that regulate costs or exert indirect economic pressure on ERISA plans are not preempted. In *Rutledge*, the Supreme Court upheld an Arkansas statute regulating PBM reimbursement rates because it did not “require plans to provide any particular benefit to any particular beneficiary in any particular way.” 592 U.S. at 90. The law affected the prices PBMs paid pharmacies, not benefit design or administration. *Id.* at 87–88. Similarly, *Travelers* upheld New York hospital surcharges that influenced plan costs without “bind[ing]

plan administrators to any particular choice" or disrupting uniform administration.
514 U.S. at 659–60.

Unlike the laws upheld in *Rutledge* and *Travelers*, Ms. Dashwood's claim targets the manner in which benefits are delivered, not their cost. Rather than regulating prices or imposing cost pressure, it seeks to impose tort liability for the administration of the Plan's benefits. Her theory would require plan fiduciaries to adopt Tennessee's physician-authorization standard as a mandatory condition for benefit delivery, directly regulating plan administration rather than affecting it marginally. *Accord Firestone Tire & Rubber Co. v. Neusser*, 810 F.2d 550, 555–56 (6th Cir. 1987) (state income tax not preempted because it applied without regard to ERISA-participants' status and had only incidental effect on plans). Ms. Dashwood cannot avoid this conclusion by recharacterizing her claim as one sounding in tort or patient safety. Preemption turns on substance, not labels. *See Aldridge v. Regions Bank*, 144 F.4th 828, 843 (6th Cir. 2025) (explaining that courts must look beyond the label of a state-law claim and examine its substance); *Peters v. Lincoln Elec. Co.*, 285 F.3d 456, 469 (6th Cir. 2002) ("It is not the label . . . on a state law claim that determines . . . preempt[ion], but whether . . . [the] claim is for the recovery of an ERISA plan benefit."). Therefore, Tennessee Code § 63-1-202 falls within ERISA's preemptive scope because it dictates how benefits must be delivered, not merely what they cost.

In sum, Ms. Dashwood's wrongful death claim is preempted because it targets the administration of prescription drug benefits under an ERISA-governed plan. Her theory would require plan fiduciaries to conform benefit delivery practices to state-law conditions rather than plan terms, thereby regulating a central matter of plan administration and subjecting multi-state plans to inconsistent standards. Because Count I has an impermissible connection with the Plan, it is expressly preempted and was properly dismissed.

B. Ms. Dashwood's claim is independently barred because it seeks monetary damages Congress deliberately excluded from ERISA's exclusive enforcement scheme.

Even if Ms. Dashwood's wrongful death claim did not "relate to" the Plan under § 514(a), it is independently preempted because it seeks remedies Congress intentionally made unavailable under ERISA's remedial regime.

ERISA § 502(a) establishes a comprehensive and exclusive framework for enforcing rights under ERISA-governed plans. *Great-W. Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 209 (2002). *See also Aldridge*, 144 F.4th at 839 (reiterating that § 502(a)'s list of available remedies is exclusive). State-law causes of action that "duplicate, supplement, or supplant" that framework are preempted. *Davila*, 542 U.S. at 209.

Under *Davila*, a state-law claim is conflict-preempted if (1) the plaintiff could have brought the claim under § 502(a), and (2) the defendant's conduct does

not implicate any legal duty independent of ERISA or a plan's terms. *Id.* at 210.

When both conditions are satisfied, preemption applies regardless of how the claim is styled or the relief sought. *Id.* at 214.

Ms. Dashwood's claim satisfies *Davila*'s first prong. She alleges that the Willoughby Defendants improperly substituted a formulary medication without physician authorization. Compl. ¶¶ 35–36. If that conduct is actionable at all, it concerns the administration of plan benefits. ERISA expressly provides a cause of action for such claims, permitting participants and beneficiaries to recover benefits due under the plan or to enforce rights under its terms. 29 U.S.C. § 1132(a)(1)(B). Ms. Dashwood, therefore, could have pursued relief under ERISA to challenge the substitution decision or the manner in which Marianne's benefits were administered. *See Davila*, 542 U.S. at 211–12 (holding that coverage denial claims could have been brought under § 502(a)(1)(B) or through injunctive relief).

A state-law claim is conflict-preempted when the plaintiff's only relationship with the defendant arises from the defendant's administration of an ERISA plan. In *Davila*, the Supreme Court held that state-law claims were preempted because the plaintiffs' alleged injuries arose entirely from coverage determinations made in administering ERISA-regulated plans. 542 U.S. at 211–13.

The same is true here. Ms. Dashwood's relationship with the Willoughby Defendants exists solely because Willoughby RX administered prescription drug benefits under the Plan. Her allegation that the Defendants should have obtained physician authorization before substituting Marianne's medication challenges how those benefits were administered, not conduct independent of the Plan. Any recovery, therefore, depends exclusively on the Plan's terms and Defendants' administration of them.

The fact that Ms. Dashwood styles her claim as a wrongful death action does not alter the analysis. Courts repeatedly hold that state-law claims arising from benefit administration decisions are preempted, regardless of how they are labeled. *See Ramsey v. Formica Corp.*, 398 F.3d 421, 424–25 (6th Cir. 2005) (state-law claims stemming from benefit processing preempted); *Settles v. Golden Rule Ins. Co.*, 927 F.2d 505, 509 (10th Cir. 1991) (wrongful death claim concerning improper plan administration preempted).

Nor does ABC Pharmacy's status as a non-fiduciary defeat preemption. Section 502(a)(3) authorizes equitable relief against non-fiduciaries who knowingly participate in fiduciary breaches. *Harris Tr. & Sav. Bank v. Salomon Smith Barney, Inc.*, 530 U.S. 238, 245–49 (2000). If Ms. Dashwood believed ABC Pharmacy participated in such a violation, ERISA would have provided a vehicle for relief. Permitting state-law claims against non-fiduciaries for the same conduct

would circumvent ERISA's exclusive enforcement scheme. *See Caffey v. Unum Life Ins. Co.*, 302 F.3d 576, 582 (6th Cir. 2002) (state law may not supplement ERISA's exclusive remedial framework).

Congress also limited the remedies available under that scheme. Section 502(a)(3) authorizes only "appropriate equitable relief," which excludes compensatory and punitive damages. 29 U.S.C. § 1132(a)(3); *Mertens v. Hewitt Assocs.*, 508 U.S. 248, 255 (1993). *Accord Helfrich v. PNC Bank, Ky., Inc.*, 267 F.3d 477, 482 (6th Cir. 2001) (ERISA-plan beneficiaries may not recover money damages from plan fiduciaries); *Bishop v. Osborn Transp., Inc.*, 838 F.2d 1173, 1174 (11th Cir. 1988) ("[T]he Fourth, Fifth, Sixth, Seventh, Eighth, and Ninth Circuits have all held that section 1132(a)(3) does not authorize . . . punitive or extra-contractual damages.").

Ms. Dashwood seeks compensatory and punitive damages—remedies categorically unavailable under ERISA—for Marianne's death. Compl. at 10. The fact that ERISA does not provide the full range of state-law remedies does not permit plaintiffs to obtain them through alternative causes of action. *Tolton*, 48 F.3d at 943. *See also Cromwell v. Equicor-Eq. HCA Corp.*, 944 F.2d 1272, 1276 (6th Cir. 1991) (an appellant being left without a remedy is irrelevant to the federal preemption analysis). That limitation reflects Congress's intent to encourage plan formation by assuring predictable liabilities and avoiding the deterrent effect of

boundless exposure to state-law damages. *Conkright v. Frommert*, 559 U.S. 506, 517 (2010).

Ms. Dashwood's claim also satisfies *Davila*'s second prong because it does not implicate any legal duty independent of ERISA or the Plan's terms. Although she invokes Tennessee Code § 63-1-202, the duties she seeks to enforce arise only from the administration of ERISA plan benefits.

A state-law duty fails *Davila*'s independence requirement when it would not exist absent the defendant's administration of ERISA plan benefits. In *Davila*, the Supreme Court rejected the argument that Texas's Health Care Liability Act imposed an independent duty of ordinary care on managed care entities. 542 U.S. at 212–14. The Court explained that liability existed only because the defendants were administering ERISA plans: if the plan terms had been correctly applied, the denial of coverage, not an independent state-law duty, would have been the sole cause of the plaintiffs' injuries. *Id.* at 212–13. Because the asserted duty and the alleged injury were inseparable from plan administration, the claims were preempted. *Id.* at 214.

Tennessee Code § 63-1-202, like the statute at issue in *Davila*, does not impose a duty independent of ERISA because the Defendants' obligation to Marianne arose solely from their administration of benefits under an ERISA-governed plan. Willoughby RX's authority to substitute medications existed only

because of the Plan’s formulary and benefit rules. If the Defendants properly applied those terms, any resulting harm would be attributable to the Plan’s coverage structure, not to an independent state-law duty. Thus, § 63-1-202 does not impose a duty separate from ERISA plan administration; rather, it regulates how benefits are delivered.

The Sixth Circuit applied this reasoning in *Hogan*, holding that state-law licensing duties were not “independent” when they arose solely in the context of ERISA benefit review. 823 F.3d at 882–83. Although the plaintiff relied on Kentucky licensing statutes, the court emphasized that the relevant inquiry is not the source of the duty, but whether it exists apart from the ERISA-regulated relationship. *Id.* at 882. Because the defendants’ conduct occurred only in administering plan benefits, the claims were preempted. *Id.* at 883.

By contrast, courts find an independent legal duty only where the plaintiff’s claim arises from a relationship that exists apart from plan administration. *See, e.g., Penny/Ohlmann/Nieman, Inc. v. Miami Valley Pension Corp.*, 399 F.3d 692, 699 (6th Cir. 2005) (explaining that state-law claims survive preemption when they arise from a contract “separate and distinct” from an ERISA plan). Likewise, in cases such as *Kloots v. Am. Express Tax and Bus. Services, Inc.*, liability rested on independent professional services agreements untethered to ERISA plan functions. 233 Fed. App’x 485, 489 (6th Cir. 2007). No such independent relationship exists

here. Ms. Dashwood’s claim rests entirely on the Defendants’ performance of ERISA plan duties.

Further, Ms. Dashwood cannot avoid preemption by characterizing her claim as a state-law tort. *See Cromwell*, 944 F.2d at 1276 (claims “at the very heart of issues within the scope of ERISA’s exclusive regulation” are preempted); *Aldridge*, 144 F.4th at 843 (rejecting attempts to enforce plan-based duties through “alternative enforcement vehicle[s]”). When, as here, liability is premised on conduct taken to administer plan benefits, no independent legal duty exists for *Davila* purposes.

Because Ms. Dashwood’s wrongful death claim depends entirely on ERISA plan administration and seeks to enforce duties arising only in that context, it satisfies *Davila*’s second prong and is conflict-preempted by ERISA’s exclusive civil enforcement scheme.

Ultimately, Count I fails under both of ERISA’s preemption doctrines. Ms. Dashwood’s wrongful death claim is expressly preempted because it targets the administration of prescription drug benefits under an ERISA-governed plan and would subject plan fiduciaries to state-law requirements Congress chose to displace. It is conflict-preempted because it seeks to enforce plan-based duties through state law and demands remedies that ERISA’s exclusive enforcement

scheme deliberately omits. Therefore, the district court correctly dismissed Count I with prejudice.

II. The district court correctly held that the relief sought by Ms. Dashwood is not available under 29 U.S.C. § 1132(a)(3).

Having barred Ms. Dashwood from enforcing plan-based duties through state law, ERISA also strictly limits the relief available when such duties are enforced through federal law. Thus, even setting preemption aside, her fiduciary duty claim fails because the monetary surcharge and disgorgement she seeks are not “appropriate equitable relief” under ERISA § 502(a)(3). Accordingly, this Court should affirm the district court’s dismissal of Count II.

ERISA defines a fiduciary as any person who exercises discretionary authority or control over plan management, plan assets, or plan administration. 29 U.S.C. § 1002(21)(A). Neither of the Willoughby Defendants contests their fiduciary status under this definition. Dist. Ct. Op. at 11 n.5.

ERISA requires fiduciaries to discharge their duties solely in the interest of plan participants and beneficiaries, for the exclusive purpose of providing benefits and defraying reasonable administrative expenses, and with the care, skill, prudence, and diligence of a prudent person acting in a similar capacity. 29 U.S.C. § 1104(a)(1)(A)–(B). When a fiduciary breaches these duties, ERISA authorizes participants, beneficiaries, or fiduciaries to seek injunctive relief or other

“appropriate equitable relief” to redress the violation or enforce the plan’s terms.
29 U.S.C. § 1132(a)(3).

For a remedy to be considered “appropriate equitable relief” as described in ERISA § 502(a)(3), both the basis of the claim and the nature of the underlying remedy sought must be equitable in nature. *Sereboff v. Mis Atl. Med. Servs.*, 547 U.S. 356, 363 (2006). To make this determination, the court examines standard treatises on equity to determine what relief was typically available in premerger equity courts. *Knudson*, 534 U.S. at 217. A remedy is only “appropriate equitable relief” under § 502(a)(3) if it is a remedy that was typically available in equity when the judicial bench was split between courts of law and courts of equity. *Mertens*, 508 U.S. at 256.

Thus, this Court must determine whether Ms. Dashwood’s requested monetary damages, in the form of a surcharge and restitution through disgorgement of profits, were typically available forms of equitable relief in premerger equity courts.

A. The district court correctly held that recovery of a monetary surcharge is not appropriate equitable relief under ERISA § 502(a)(3).

The district court was correct in holding that § 502(a)(3) precludes recovery of a monetary surcharge, and this Court should affirm its decision.

The Supreme Court has held that monetary relief in the form of a surcharge for losses caused by a nonfiduciary was not traditionally available in premerger equity courts and therefore is not recoverable under § 502(a)(3). *Mertens*, 508 U.S. at 255. The Court has also suggested that, in ERISA actions alleging a fiduciary’s breach of duty, monetary relief in the form of a surcharge may be available under § 502(a)(3). *CIGNA Corp. v. Amara*, 563 U.S. 421, 441–42 (2011). However, the Court later clarified that *Amara*’s suggestion was dicta, not precedent that would overrule *Mertens*. *Montanile v. Bd. of Trs. of Nat’l Elevator Indus. Health Benefit Plan*, 577 U.S. 136, 148 n.3 (2016). Several circuits, including the Eleventh Circuit, have nonetheless held that plaintiffs may recover monetary relief in the form of a surcharge under § 502(a)(3). *Gimeno v. NCHMD, Inc.*, 38 F.4th 910, 914–15 (11th Cir. 2022). This Circuit, however, has held that *Mertens* precludes recovery of monetary damages under § 502(a)(3) for fiduciary breaches. *Aldridge*, 144 F.4th at 847; *Helfrich*, 267 F.3d at 480–82.

Remedies involving the recovery of monetary damages do not fall within the “appropriate equitable relief” that is recoverable under § 502(a)(3). *Mertens*, 508 U.S. at 257. In *Mertens*, a group of employees filed suit to recover monetary damages against the defendant, a non-fiduciary and actuary of their ERISA plan, for knowingly participating in a breach of fiduciary duties under the plan. *Id.* The Supreme Court held that the monetary relief plaintiffs sought was not recoverable

under § 502(a)(3). *Id.* The Court held that for relief to qualify as “appropriate equitable relief,” it must have been typically available in premerger equity courts. *Id.* The Court reasoned that allowing recovery of any remedy historically available in equity would render the language of § 502(a)(3) meaningless, because equity courts could at times award all kinds of remedies. *Id.* Such a reading would also nullify §§ 29 U.S.C. 1132(g)(2)(E) and 1109(a), which distinguish between legal and equitable remedies and between remedial and equitable relief, respectively. *Id.* at 258. Having established that “appropriate equitable relief” is limited to remedies typically available in premerger equity courts, the Court held that monetary relief in the form of a surcharge, because it was not so available, cannot be recovered under § 502(a)(3). *Id.* at 263.

Although *Mertens* indicates otherwise, the Supreme Court has suggested that monetary relief may constitute equitable relief when imposed as a surcharge against a trustee—a remedy traditionally available only in courts of equity. *Amara*, 563 U.S. at 441–42. In *Amara*, plan participants sued under ERISA, and the district court reformed the benefits plan and awarded monetary relief consistent with that reformation. *Id.* at 424–26. On review, the Supreme Court considered whether ERISA authorized that relief and held that it did, concluding that the monetary award constituted “appropriate equitable relief” under § 502(a)(3). *Id.* at 440. The Court reasoned that suits by plan beneficiaries against fiduciaries are analogous to

trust beneficiary actions against trustees, which were historically cognizable only in premerger equity courts. *Id.* at 441–42. Because monetary relief against a trustee was traditionally available in equity, the Court concluded that such relief could qualify as equitable when sought against an ERISA fiduciary. *Id.* at 442. The Court distinguished *Mertens* on that basis, emphasizing that *Amara* involved fiduciary defendants, unlike the non-fiduciary defendant in *Mertens*. *Id.*

Since its decision, the Supreme Court has stated that its indication in *Amara* that monetary relief was available under § 502(a)(3) was dicta and did not overrule its holding in *Mertens*. *Montanile*, 577 U.S. at 148 n.3. In *Montanile*, the Supreme Court held that monetary damages are not "appropriate equitable relief," explaining that although equity courts could award such relief in cases of exclusive equitable jurisdiction, they could not do so where jurisdiction was shared with courts of law, confirming that such remedies were not typically equitable. *Id.* at 149. Additionally, the Court stated that the language in *Amara* implicating the availability of monetary relief under § 502(a)(3) was not essential to the Court's decision, and that the decision in *Mertens* is unchanged by *Amara*. *Id.*

Although *Amara*'s allowance of plan participants to recover monetary damages in § 502(a)(3) has been reduced to dicta, the Eleventh Circuit, as well as a number of other appellate circuits, have followed its reasoning to allow plan participants to recover monetary relief under § 502(a)(3). *Gimeno*, 38 F.4th at 914–

15. The Eleventh Circuit held that a monetary surcharge was an appropriate form of equitable relief under § 502(a)(3), and found that *Mertens* was factually distinguishable because it involved a nonfiduciary, and that although *Amara* was dicta, it was still a correct application of the law, correctly recognizing monetary relief in trust cases to be exclusive to premerger equity courts. *Id.*

This Court has rejected the holdings of *Gimeno* and the number of other appellate circuits that follow its holding, and has followed the holding in *Mertens* while ignoring *Amara*'s dicta to hold that § 502(a)(3) does not allow a plaintiff to recover monetary damages through a surcharge. *Aldridge*, 144 F.4th at 847. In *Aldridge*, plan participants brought suit against the plan's fiduciaries for breach of duties and attempted to recover a surcharge under § 502(a)(3). *Id.* at 835. On appeal, the Sixth Circuit agreed with the district court to hold that the plan participants could not recover a surcharge under § 502(a)(3). *Id.* at 847. First, the court reasoned that it need not follow *Amara*'s holding, as *Montanile* held that *Amara* was dicta, and affirmed that *Mertens* remains unchanged by *Amara*. *Id.* Second, the court reasoned that *Mertens* is binding precedent, and it must be followed by the Sixth Circuit. *Id.* The court was not deterred by the fact that the defendant was a fiduciary where defendant in *Mertens* was not, holding this is a distinction without a difference, as whether a defendant was a fiduciary or non-fiduciary had no bearing on a plaintiff's ability to recover for a breach in

premerger equity courts, meaning there is no basis to conclude that *Mertens* does not apply to breaches by fiduciaries. *Id.* at 847. Further, the court reasoned that its previous decisions had precluded a plaintiff's ability to recover a surcharge under § 502(a)(3). *Id.*

Mertens is factually analogous to this case, and its holding should control here. In *Mertens*, plan participants sought to recover a surcharge for damages they suffered as a result of a fiduciary breach involving the plan. Here, plan participants are seeking to recover a surcharge resulting from a breach of fiduciary duties under the plan. The distinction the Supreme Court drew between *Mertens* and *Amara*, which applies here, does not diminish *Mertens*' binding effect. *Mertens* did not bind the Court's decision in *Amara* because *Amara* concerned a fiduciary's breach, whereas *Mertens* concerned the breach by a non-fiduciary third party. *Amara*, 536 U.S. at 442. However, as this Court held in *Aldridge*, this distinction has no bearing, and it should have no bearing on *Mertens*' applicability here. *Aldridge*, 144 F.4th at 847.

Additionally, this Court's holding in *Aldridge* is factually analogous to this case, and it must bind here. In *Aldridge*, plan participants sought to recover a surcharge resulting from a breach of fiduciary duties under that plan. Here, plan participants seek to recover a surcharge resulting from a breach of fiduciary duties under that plan. This is significant, as prior decisions of this Court remain

controlling authority in subsequent proceedings within this Court unless inconsistent decisions of the Supreme Court require modification of the earlier decision. *Salmi v. Sec’y of Health & Hum. Servs.*, 774 F.2d 685, 689 (6th Cir. 1985). While it is true that this Court may re-evaluate its prior decisions as a result of subsequent dicta by the Supreme Court, *United States v. Fields*, 53 F.4th 1027, 1048 & n.13 (6th Cir. 2022), this Court will refuse to acknowledge the Supreme Court’s dicta if they have a substantial reason to do so, such as the Supreme Court later undermining the rationale of the dicta. *Ellmann v. Baker (In re Baker)*, 791 F.3d 677, 682 (6th Cir. 2015). Given the Supreme Court’s relegation of *Amara* in *Montanile*, this Court may refuse to acknowledge *Amara*’s dicta. This Court must follow its decision in *Aldridge*, as it is a factually analogous case and its holding has not been overturned by this Court or the Supreme Court, and find that § 502(a)(3) precludes Ms. Dashwood from recovering monetary relief in the form of a surcharge.

This Court should follow the Supreme Court’s decision in *Mertens* and continue to follow this Court’s binding precedent in *Aldridge* to hold that employee benefits plan participants may not recover monetary damages in the form of a surcharge under § 502(a)(3). Additionally, this Court need not be bound by *Amara*’s dicta, nor by the number of appellate circuits that have followed it.

B. The district court correctly held that 29 U.S.C. § 1132(a)(3) precludes recovery of restitution through the disgorgement of profits.

The district court was correct in holding that the disgorgement of profits that Ms. Dashwood requested in her amended complaint is not an available form of equitable relief under § 502(a)(3), as the Supreme Court's decisions in *Knudson*, *Sereboff*, and *Montanile* have held that a plaintiff may not recover restitution from a defendant's general assets under § 502(a)(3).

The ability of plan participants to recover monetary restitution under § 502(a)(3), like the disgorgement of profits sought here, depends upon the nature of the restitution sought. For a plaintiff to recover monetary restitution under § 502(a)(3), the plaintiff must seek to recover specific, identifiable funds from the defendant. *Knudson*, 534 U.S. at 214. A plaintiff may recover monetary restitution through an equitable lien by agreement if the lien seeks to recover specific, identifiable funds within the defendants' possession and control. *Sereboff*, 547 U.S. at 362–63. When a plaintiff can recover monetary restitution, whether through the enforcement of an equitable lien by agreement or through other restitution, the court will allow recovery only against specific, identifiable funds that remain in the defendant's possession or against traceable items the defendant purchased with those funds. *Montanile*, 577 U.S. at 144.

For a plaintiff to recover monetary restitution under § 502(a)(3), the plaintiff must seek to recover specific, identifiable funds that are still within the defendant's possession. *Knudson*, 534 U.S. at 214. In *Knudson*, plan administrators sought to recover restitution by enforcing a lien by agreement for benefits paid to plan beneficiaries who recovered damages from third-party tortfeasors. *Id.* at 204. The plan granted the administrator the right to recover any benefits recovered from a third-party tortfeasor. *Id.* at 207. The defendants suffered an injury and brought suit against the tortfeasor, where they received a monetary settlement from the tortfeasor, which was sent to a trust or the defendant's attorney. *Id.* at 208. When the plaintiffs sought to recover the benefits paid to the defendant beneficiaries under § 502(a)(3), the Supreme Court held that recovery of these funds through restitution was not appropriate equitable relief under § 502(a)(3), reasoning that in premerger equity courts, a plaintiff could only seek restitution through equitable lien if money or property identified as belonging to the plaintiff could clearly be traced to particular funds or property in the defendant's possession. *Id.* This did not occur, as the money sought remained in trust or with the defendant's attorney, never coming into the defendant's possession. *Id.* The Court stated that if what is sought isn't in the defendant's possession, a claim for restitution is akin to a creditor seeking to impose personal liability on a defendant, a legal remedy in premerger courts. *Id.* at 215.

A plaintiff may recover monetary restitution under § 502(a)(3) when that restitution is through the enforcement of an equitable lien by agreement, and the agreement created a lien against specific, identifiable funds of the defendant. *Sereboff*, 547 U.S. at 362–63. In *Sereboff*, plan administrators sought to recover monetary relief under § 502(a)(3) through the enforcement of an equitable lien by agreement. *Id.* at 363–64. The agreement required plan administrators to be reimbursed for benefits paid to plan beneficiaries when the beneficiaries recover against a third-party tortfeasor. *Id.* The defendant suffered injury, for which the plan administrator compensated. *Id.* After the defendant recovered damages from a third-party tortfeasor, the plaintiff sought reimbursement under the agreement. *Id.* The Court held that the plaintiffs could recover through the enforcement of a lien by agreement. *Id.* at 364. The Court reasoned that its precedent has shown that enforcement of a contract to convey a specific object from one party to another constituted relief typically available in premerger courts. *Id.* at 357. While the defendant argued that for equitable restitution to be enforced, the lien by agreement must identify specific funds already within the defendant's possession, the Court held that this tracing requirement did not apply to the enforcement of a lien by agreement when the original lien by agreement did seek specific funds to recover from, although they were not yet in the defendant's possession. *Id.* at 358. The Court allowed the plaintiffs to recover monetary restitution as the agreement

identified specific funds to be recovered from, recovery from potential lawsuits, which made the relief sought through a lien by agreement equitable. *Id.* at 362–63.

When a plaintiff can recover monetary restitution, whether through the enforcement of a lien by agreement or another form of equitable restitution, the court will allow for relief only against specifically identified funds that remain in the defendant's possession; an equitable claim ceases to exist when those funds have been dissipated. *Montanile*, 577 U.S. at 144. In *Montanile*, a plan administrator brought an action seeking restitution by enforcing a lien by agreement to recover from a settlement the beneficiary received from a third-party tortfeasor. *Id.* at 136. The Court held that a beneficiary can not recover equitable restitution from the defendant's general assets under § 502(a)(3) as a result of the dissipation of the specific funds. *Id.* at 146. The Court reasoned that, in premerger courts, recovering against a defendant's general assets amounted to assigning personal liability to the defendant, which was a legal remedy. *Id.* at 146. The Court noted that this rule applies to all types of equitable restitution. *Id.* While the plaintiff argued that the Court's decision in *Sereboff* allowed restitution through the enforcement of a lien by agreement against general assets, the Court held that *Sereboff* did not address this issue. *Id.* at 147. The Court held that *Sereboff* addressed only whether a lien by agreement must identify funds that were originally in the plaintiff's possession. *Id.* The Court indicated that if a defendant

commingled a specific fund to which a lien attached with other funds, the plaintiff could recover the amount of the lien from the entirety of the funds. *Id.* at 149.

This case is factually analogous to *Knudson*, and this Court should follow its decision to hold that the restitution Ms. Dashwood seeks is not an available form of equitable relief under § 502(a)(3). In *Knudson*, the plaintiffs sought monetary relief in the form of equitable restitution. Here, Ms. Dashwood is seeking monetary relief in the form of equitable restitution through the disgorgement of the Willoughby Defendants' profits. In *Knudson*, the plaintiffs did not identify specific funds or objects within the defendant's possession to recover against and had to rely on recovery against the defendant's general assets, as the only specific funds sought were not in the defendant's possession. Here, Ms. Dashwood did not identify specific, traceable funds in the Willoughby Defendants' possession, as the Amended Complaint alleges none and instead seeks recovery from their general assets. *See* Compl. at 10; Dist. Ct. Op. at 14. This Court must follow *Knudson*, which is binding and factually analogous, and which squarely precludes Ms. Dashwood from recovering monetary restitution from the Willoughby Defendants' general assets under § 502(a)(3). Additionally, the fact that plaintiffs in *Knudson* sought equitable restitution through the enforcement of a lien by agreement has no bearing on its applicability here. *Montanile* notes that the plaintiff must seek

specific identifiable funds in claims for lien by agreement and in claims seeking other forms of equitable restitution alike. *Montanile*, 577 U.S. at 146.

This case is factually distinguishable from *Sereboff*. In *Sereboff*, the plaintiffs sought to recover monetary restitution from specific, identifiable funds in the defendants' possession. Here, Ms. Dashwood is not seeking enforcement against specific, identifiable funds in the possession of the Willoughby Defendants, but rather against their general assets. *See* Compl. at 10; Dist. Ct. Op. at 14. This distinction is significant, as the plaintiff's ability to recover monetary restitution in *Sereboff* was a direct result of seeking enforcement against specific, identifiable funds in the defendant's possession. The Supreme Court's decision in *Sereboff* should not bind this Court's decision here based on this distinction.

Additionally, Ms. Dashwood cannot rely on the Court's indication in *Montanile* that if a defendant commingled a specifically identified fund to which a lien attached with a different fund of the defendant's, the commingling may allow the plaintiff to recover the amount of the lien from the entirety of the funds. This is because this ability to recover from the defendant's general assets after the commingling of specific funds is dependent on the original existence of a specific, identifiable fund within the defendant's possession, which never existed here.

This Court should affirm the district court's dismissal of Count II because the surcharge that Ms. Dashwood seeks is not a recoverable form of equitable relief under ERISA § 502(a)(3), as the Supreme Court's and this Court's decisions dictate. The relief that Ms. Dashwood seeks in the form of equitable restitution is also unrecoverable under § 502(a)(3), as Ms. Dashwood does not seek to recover specific, identifiable funds within the Defendants' possession, something that the Supreme Court requires under § 502(a)(3) in its decisions in *Knudson*, *Montanile*, and *Sereboff*.

CONCLUSION

Ms. Dashwood's claims are preempted by ERISA and seek relief that ERISA does not permit. The district court correctly dismissed both counts, and this Court should affirm.

Dated this 23rd day of January, 2026.

Respectfully Submitted,

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BY: _____

/s/ Team 10