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.

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

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Appellees' Brief

Team No. 6

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2. Whether an appellant states a claim for relief under ERISA § 502(a)(3) by seeking loss-based surcharge and disgorgement payable from appellees' general assets, where the statute authorizes only "appropriate equitable relief."

STATEMENT OF THE CASE

I. THIS CASE ARISES FROM AN ERISA-GOVERNED HEALTH PLAN THAT GIVES FULL DISCRETION TO THE PLAN ADMINISTRATOR.

Marianne Dashwood ("Mrs. Dashwood") participated in a healthcare plan (the "Plan") governed by the Employee Retirement Income Security Act of 1974 ("ERISA") and sponsored by her former employer, Cottage Press. Cottage Press operates in various academic communities, including Johnson City, Tennessee—where Mrs. Dashwood lived and worked before her death. Willoughby Health Insurance Co. ("Willoughby Health") fully insures and administers the Plan, which grants it full discretionary authority to decide claims for benefits.

II. THE PLAN'S PRESCRIPTION DRUG STRUCTURE RELIES ON A FORMULARY DESIGNED TO MANAGE COVERAGE DECISIONS.

Willoughby Health administers prescription drug benefits through its subsidiary, Willoughby RX. Willoughby RX operates as a pharmacy benefit manager ("PBM") and maintains a formulary of preferred medications. The formulary guides coverage decisions for prescription drugs and determines which medications qualify

as preferred drugs under the Plan. In 2021, Willoughby RX acquired ABC Pharmacy, Inc. ("ABC"), a pharmacy chain with retail outlets across the U.S., including in Johnson City. Because of the acquisition, ABC is now a subsidiary of Willoughby RX and is part of the larger Willoughby Health Care umbrella.

III. JOHNSON CITY HOSPITAL CENTER TREATED MRS. DASHWOOD FOR A STAPH INFECTION AND DISCHARGED HER WITH A PRESCRIPTION.

In December 2024, Mrs. Dashwood cut her leg on a hike and later developed a serious infection that required her to be hospitalized at Johnson City Hospital Center. Her medical team concluded that she had a drug-resistant staph infection called MRSA. They treated her with intravenous vancomycin for five days, and she responded well to the treatment. On December 10, 2024, the hospital discharged Mrs. Dashwood with a five-day vancomycin prescription to continue her treatment.

IV. ABC DISPENSED A FORMULARY MEDICATION PURSUANT TO PLAN ADMINISTRATION.

After Mrs. Dashwood's discharge, her sister, Elinor Dashwood ("Appellant," and collectively with the class of others similarly situated, "Appellants"), brought the prescription to an ABC Pharmacy location in Johnson City. Rather than vancomycin, ABC gave her a five-day supply of Bactrim. When Appellant noticed the difference, she asked the pharmacist about the medication, who stated that the "insurance company" had switched the prescription to Bactrim. The pharmacist also allegedly stated that Bactrim was the generic form of vancomycin. Mrs. Dashwood took Bactrim for just over a day, then experienced a severe allergic reaction. She died in an ambulance on her way back to the hospital.

V. APPELLANT FILED SUIT ALLEGING THAT BACTRIM IS NOT THE GENERIC FORM OF VANCOMYCIN, AND THAT MRS. DASHWOOD WAS ALLERGIC TO SULFA-DRUGS LIKE VANCOMYCIN.

Following Mrs. Dashwood's death, Appellant filed this action against Willoughby Health, Willoughby RX, and ABC (collectively, "Appellees"). Appellant brought claims on her own behalf and on behalf of Mrs. Dashwood's estate as executrix. She also seeks to represent a class of other similarly situated Plan participants.

Appellant's Amended Complaint claims that the substitution of vancomycin for Bactrim was improper. It asserts that Bactrim and vancomycin are in different classes of antibiotics; vancomycin is in a class called fluoroquinolones, while Bactrim is in a class called sulfonamides or "sulfa-drugs." Thus, Appellant asserts that the pharmacist misrepresented Bactrim as the generic form of vancomycin.

The Amended Complaint further claims that Mrs. Dashwood had a documented allergy to sulfa-drugs and previously experienced an adverse reaction to them in 2022. It alleges that Mrs. Dashwood told hospital staff about this allergy during her hospitalization, and that her doctor prescribed vancomycin for that reason. Appellant also claims that neither the Plan administrator nor the pharmacy contacted Mrs. Dashwood's physician before dispensing Bactrim.

VI. APPELLANT ASSERTED STATE-LAW AND ERISA CLAIMS.

Count I of Appellant's Amended Complaint asserts a Tennessee wrongful death claim against Willoughby RX and ABC Pharmacy. The claim relies in part on a Tennessee statute that restricts medication substitutions without physician

authorization. That statute does not provide a private right of action. Appellant nevertheless contends that it establishes a duty sufficient to support tort liability. Under Count I, Appellant seeks $10 million in compensatory and punitive damages.

Count II asserts a federal claim under ERISA § 404 against Willoughby Health and Willoughby RX. Appellant alleges fiduciary breach based on the application of the formulary policy. Appellant purportedly seeks relief under ERISA § 502(a)(3)—which authorizes an injunction or "other appropriate equitable relief"—but requests surcharge and disgorgement in addition to declaratory and injunctive relief.

VII. APPELLEES MOVED TO DISMISS BASED ON ERISA PREEMPTION AND LIMITS ON ERISA REMEDIES.

Appellees jointly moved to dismiss the Amended Complaint under Federal Rule of Civil Procedure 12(b)(6). With respect to Count I, Willoughby RX and ABC argued that ERISA expressly and completely preempts the state-law wrongful death claim. With respect to Count II, Willoughby Health and Willoughby RX argued that ERISA does not authorize the relief Appellant seeks. Even assuming a fiduciary breach, ERISA § 502(a)(3) does not permit the requested remedies.

VIII. THE DISTRICT COURT CORRECTLY DISMISSED BOTH CLAIMS BECAUSE ERISA PREEMPTS THE CLAIM I STATE-LAW THEORY AND PREVENTS THE REQUESTED CLAIM II RELIEF.

The United States District Court for the Eastern District of Tennessee granted Appellees' joint motion to dismiss under FRCP 12(b)(6). The court

dismissed the Amended Complaint with prejudice, concluding that further amendment would be futile.

The court first addressed Appellant's wrongful death claim against Willoughby RX and ABC. It held that ERISA expressly preempts this claim, which challenged how Appellees administered prescription drug benefits under an ERISA-governed plan. The court explained that ERISA's preemption provision sweeps broadly; it preempts any state law that has a connection with or reference to an ERISA plan. The court emphasized that claims interfere with plan administration when they regulate benefit design or claims processing. The court rejected Appellant's attempt to recast her claim as independent of ERISA. The court concluded that the alleged harm flowed directly from the administration of prescription drug benefits under the Plan, as the claim targeted the formulary system and the substitution decision made pursuant to plan terms.

The court further held that the Tennessee pharmacy statute did not save the claim from preemption. That statute did not merely regulate costs. Instead, as applied here, it imposed requirements that would dictate benefit administration and disrupt national uniformity across a multi-state plan. The court also concluded that ERISA preempted Count I because Appellant sought remedies Congress deliberately excluded from ERISA's enforcement scheme. Appellant demanded compensatory and punitive damages for alleged mishandling of plan benefits, but ERISA does not permit those remedies.

The court next addressed Appellant's Count II fiduciary breach claim under ERISA § 502(a)(3). Even assuming that Appellant plausibly alleged a fiduciary breach, the court held that ERISA did not allow the form of relief that Appellant sought. The court explained that § 502(a)(3) authorizes only equitable relief traditionally available in courts of equity. It does not authorize compensatory damages measured by a plan participant's losses.

The court held that Appellant's request for a surcharge based on Mrs. Dashwood's death amounted to impermissible legal damages. The court also rejected Appellant's disgorgement theory, holding that equitable restitution requires specifically identifiable funds in the appellees' possessions. Appellant did not identify such funds. The alleged cost savings and rebates did not qualify as traceable equitable property.

Because neither Count I nor Count II stated a viable claim, the court dismissed the action in full. Because amendment would not cure the legal defects, it therefore dismissed the case with prejudice. Appellant now appeals the dismissal to the United States Court of Appeals for the Sixth Circuit.

SUMMARY OF THE ARGUMENT

I. THIS COURT SHOULD AFFIRM THE DISTRICT COURT'S DISMISSAL OF APPELLANT'S WRONGFUL DEATH CLAIM BECAUSE IT IMPERMISSIBLY "RELATES" TO AN ERISA-GOVERNED BENEFIT PLAN AND SEEKS ADDITIONAL DAMAGES PROHIBITED BY FEDERAL LAW.

Since its inception in 1974, ERISA has provided a uniform federal framework for the regulation and administration of employee benefit plans. Congress

understood that ERISA was necessary to ensure that disputes over plan benefits are resolved with consistency rather than through conflicting state laws. As such, ERISA provides an exclusive civil enforcement remedy under Section 502(a) that narrowly defines available causes of action and limits available relief.

The district court properly dismissed Appellant's first claim because ERISA's deliberately expansive preemption provision applies. First, Appellant's claim impermissibly "relates to" how prescription drug benefits are structured and administered under the plan because it asserts that the formulary scheme used to determine benefits by Willoughby RX directly contravenes Tennessee law. Second, Appellant attempts to circumvent ERISA's available remedies and recover compensatory and punitive damages that Congress explicitly rejected.

Even though Appellant presented a state law claim for wrongful death against Willoughby RX and ABC Pharmacy Inc., Appellant's claim is preempted by federal law and this Court should affirm the lower court's grant of the motion to dismiss.

II. THIS COURT SHOULD AFFIRM THE DISTRICT COURT'S DISMISSAL OF APPELLANT'S SECOND CLAIM BECAUSE THE REMEDIES SOUGHT DO NOT CONSTITUTE THE "APPROPRIATE EQUITABLE RELIEF" THAT ERISA § 502(a)(3) AUTHORIZES.

The district court properly dismissed Appellant's second claim because the remedies sought do not constitute the "appropriate equitable relief" that ERISA § 502(a)(3) authorizes. That provision does not allow general monetary recovery and limits relief to traditional equitable remedies, regardless of how a party frames

their claim. Appellant's claim fails because the relief sought is compensatory, not equitable. Appellant seeks monetary recovery designed to make her whole and to impose personal liability on Appellees, rather than equitable relief traditionally available in equity. Allegations of fiduciary misconduct do not expand the scope of relief that ERISA authorizes, and courts assess the nature of the remedy sought—not the seriousness of the alleged misconduct.

Appellant's surcharge theory seeks loss-based compensation and therefore constitutes legal damages, not equitable relief. Courts consistently reject attempts to recast compensatory damages as equitable surcharge, focusing on the substance of the relief rather than its label.

Appellant's disgorgement theory also fails because she does not identify any specific, traceable funds belonging in good conscience to Appellant and currently in Appellees' possession. Instead, Appellant seeks a generalized monetary recovery untethered to any identifiable property, which would require a monetary—or legal—judgment rather than equitable relief. Because Appellant seeks remedies ERISA does not authorize, this Court should affirm the district court's dismissal of Appellant's second claim.

ARGUMENT

I. THIS COURT SHOULD AFFIRM THE DISTRICT COURT'S DECISION AND FIND THAT APPELLANT'S WRONGFUL DEATH CLAIM IS PREEMPTED BY ERISA.

In 1974, ERISA established a uniform federal framework governing the administration of employee benefit plans. 29 U.S.C. § 1001 *et seq*; *Shaw v. Delta Air*

Lines, Inc., 463 U.S. 85, 90 (1983). The policy incentive behind this comprehensive law was to ensure that disputes over plan benefits and fiduciary conduct were resolved under a single, nationally consistent body of law. *Pilot Life Ins. Co v. Dedeaux*, 481 U.S. 41, 46 (1987). As such, ERISA provides an exclusive civil enforcement provision which defines available causes of action plan participants and beneficiaries may pursue and strictly limits their subsequent remedies. 29 U.S.C. § 1132(a); *Aetna Health Inc. v. Davila*, 542 U.S. 200, 208–09 (2004). Here, Ms. Dashwood has presented a wrongful death claim under Tennessee law against Willoughby RX and ABC Pharmacy, Inc. Yet because Ms. Dashwood's wrongful death claim is preempted by ERISA, Appellant's first cause of action must be dismissed.

The United States District Court for the Eastern District of Tennessee granted Appellees' motion to dismiss, and Appellant appealed the decision to the Sixth Circuit. Compl. at 15. This Court should affirm the lower court's decision and hold that a state law claim that relates to the administration of prescription drug benefits under an employee benefits plan is preempted by ERISA.

A. Tennessee Code § 63-1-202 is expressly preempted by ERISA because it creates an impermissible connection with a health benefit plan.

Section 514(a) of ERISA expressly contains a broad preemption clause that applies to "any and all State laws insofar as they may now or hereinafter relate to an employee benefit plan" regardless of the state law's intent or design. 29 U.S.C. § 1144(a); *Cromwell v. Equicor-Equitable HCA Corp.*, 944 F.2d 1272, 1276 (6th Cir.

1991). A law "relates to" an employee welfare plan for purposes of ERISA "if it has a connection with or reference to such a plan." *Shaw*, 463 U.S. at 97; *Egelhoff v. Egelhoff*, 532 U.S. 141, 147 (2001). A state law claim is preempted under the "connection with" prong if it "governs a central matter of plan administration or interferes with nationally uniform plan administration." *Rutledge v. Pharm. Care Mgmt. Ass'n*, 592 U.S. 80, 87 (2020) (quoting *Egelhoff*, 532 U.S. at 148). Moreover, a law satisfied the "reference to" prong if it "'acts immediately and exclusively upon ERISA plans or where the existence of ERISA plans is essential to the law's operation[1].'" *Id.* at 88 (citing *Gobeille v. Liberty Mut. Ins. Co.*, 577 U.S. 312, 319–20 (2016)).

State laws that mandate a specific benefit structure create an "impermissible connection" with an ERISA-governed plan and are therefore preempted. *Id.* at 86–87; *Egelhoff*, 532 U.S. at 147. For instance in *Egelhoff*, a Washington statute automatically revoked beneficiary status of former spouses incident to divorce. 532 U.S. at 143. Even though Petitioner was listed as her ex-husband's beneficiary under his benefit plan, Washington law automatically disqualified her from receiving life insurance proceeds under the plan. *Id.* at 144.

The Court reasoned that the statute had an "impermissible connection with ERISA plans" because it required plan administrators to structure their benefits

[1] Because the Tennessee laws do not reference ERISA plans, they are not preempted under this prong.

scheme in accordance with state law as opposed to the governing plan documents. *Id.* at 147. The Court further reasoned that Washington's statute undermined standardized plan administration by imposing an obligation not required by other states. *Id.* at 148. In holding that preemption applied, the Court acknowledged that ERISA's preemption provision is "clearly expansive" in order to accomplish Congress' intent of creating a uniform system of plan administration. *Id.* at 146 (quoting *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 655 (1995)). Thus to ignore this fundamental characteristic is to misinterpret the plain language of ERISA's text.

By contrast, state laws that merely dictate cost regulation without "forcing plans to adopt any particular scheme of substantive coverage" are not subject to ERISA preemption. *Rutledge*, 592 U.S. at 88. For instance in *Rutledge*, Arkansas adopted Act 900 which required pharmacy benefit managers ("PBMs") to reimburse pharmacies for the cost of medications purchased at or above the wholesale price. *Id.* at 84. The Court held that because Act 900 merely "regulate[d] reimbursement rates," its relation to a benefits plan was too attenuated to be preempted. *Id.* at 90.

Here, Tennessee's law creates an impermissible "connection with" the Willoughby Health plan because it encroaches on Willoughby RX's authority to regulate the administration of prescription drug benefits. As outlined in the Summary Plan Description ("SPD"), the governing plan document, Willoughby Health has authorized Willoughby RX to develop and apply a formulary scheme in

deciding prescription drug claims. Compl. at 3. Through the formulary, Willoughby RX can catalog prescription drugs and rank certain medications as "preferred." *Id.* Prior to the Tennessee Code's adoption, Willoughby RX could engage in this permitted practice under the SPD without state interference. Now the law at issue requires pharmacies and PBMs to obtain "express written authorization of the patient's treating physician" prior to substituting drugs, or face penalties. *Id.* at 1–2.

Like the Washington law in *Egelhoff*, which required plan administrators to structure their benefit plans in accordance with state law, here, Tennessee's law requires the same of Willoughby RX. Yet unlike the law in *Rutledge*, which dealt with mere cost regulation, the Tennessee law here strikes at the core of plan administration by regulating how prescription drug benefits are decided. Because Tennessee Code § 63-1-202 creates an impermissible connection with the Willoughby Health plan, it is expressly preempted by ERISA Section 514(a), and any state law claim premised on this Code must be denied.

B. Courts have consistently held that wrongful death suits premised on a denial of benefits are preempted by ERISA.

Since ERISA's adoption, circuit courts have regularly held that wrongful death claims based on a denial of benefits fall within ERISA's statutory purview and are therefore preempted. *Tolton v. Am. Biodyne, Inc.*, 48 F.3d 937, 942 (6th Cir. 1995); *Spain v. Aetna Life Ins. Co.*, 11 F.3d 129, 131 (9th Cir. 1993). This Court can

therefore best resolve the issue at bar by adhering to the reasoning of several circuits and dismiss Appellant's cause of action for wrongful death in its entirety.

For instance, in *Tolton*, Plaintiffs brought suit against the decedent's contracted administrator of mental health benefits alleging wrongful death for refusing to authorize inpatient mental health care to treat the decedent's suicidal thoughts. 48 F.3d at 939–40. The decedent's plan administrator reached this conclusion to deny benefits after conducting a utilization review, to determine "what benefits were available to Tolton under the plan." *Id.* at 942. The Court ultimately held that because the wrongful death claim "ar[ose] from American Biodyne's refusal to authorize psychiatric benefits to Tolton" it sufficiently "related to" the plan and was consequently preempted. *Id.*

Similarly in *Spain*, the decedent was initially denied coverage of a medically necessary bone marrow transplant to treat his cancer by his plan administrator. 11 F.3d at 131. Plaintiffs brought suit on the decedent's behalf and alleged that Aetna's initial denial of coverage negligently caused the decedent's untimely death. *Id.* The Court affirmed the district court's decision and held that Plaintiffs' wrongful death suit was preempted by ERISA because it "'relate[d] to' the administration and disbursement of ERISA plan benefits." *Id.*

Here, Appellant's wrongful death claim is also premised on a denial of benefits under the plan. In the First Amended Complaint, Appellant alleges that following Mrs. Dashwood's hospitalization with MRSA she was prescribed the

antibiotic vancomycin to treat her infection. Compl. at 4. To determine Mrs. Dashwood's eligibility for vancomycin pursuant to the plan, Willoughby RX applied a formulary scheme before dispensing prescription drug benefits. *Id.* at 3. Pursuant to the formulary, Willoughby RX determined that the antibiotic Bactrim was a "similar preferred drug" and denied the former in lieu of the latter medication. *Id.* at 5. Like the Plaintiff in *Tolton*, whose plan administrator conducted a utilization review prior to denying him benefits, here, Willoughby RX applied a similar mechanism prior to denying vancomycin. Thus, because Appellant's wrongful death claim here is analogous to the one presented in *Tolton*, this Court should find that preemption applies and affirm the dismissal of Appellant's first claim.

C. Appellant's attempt to recover state law damages for wrongful death conflicts with ERISA's civil enforcement remedy and is therefore preempted.

Section 502(a) of ERISA provides for an exclusive civil enforcement remedy. 29 U.S.C. § 1132(a). It allows participants or beneficiaries to recover, enforce, or clarify their rights "under the terms of the plan." *Id.* This remedial scheme facilitates Congress' goal of "creating a comprehensive statute for the regulation of employee benefit plans." *Davila*, 542 U.S. at 208. The Supreme Court has acknowledged that if ERISA plan participants "were free to obtain remedies under state law that Congress rejected in ERISA" then Section 502(a)'s federal remedial scheme "would be completely undermined." *Id.* at 208–09 (quoting *Pilot Life Ins. Co.*, 481 U.S. at 54). Consequently, "any state-law cause of action that duplicates, supplements, or supplants the ERISA civil enforcement remedy" under Section

502(a) is improper. *Id.* at 209. Preemption therefore applies if an individual could have brought suit under ERISA, and "where there is no other independent legal duty that is implicated by a defendant's actions." *Id.* at 210.

For example, in *Davila*, Plaintiffs brought suit against their respective health maintenance organizations alleging injuries arising from the denial of coverage under their ERISA-regulated benefit plan. *Id.* at 204. Davila was hospitalized for a "severe reaction" when he began taking Naprosyn for his arthritis after Aetna refused to cover his prescription for Vioxx. *Id.* at 205. Similarly, Calad suffered post-surgical complications when she was denied coverage for an extended hospital stay, despite her physician's recommendation. *Id.* Plaintiffs argued that Defendants breached their duty of care under Texas law when they denied Plaintiffs coverage. *Id.*

In assessing whether Plaintiffs' claims were preempted under ERISA, the Supreme Court applied the aforementioned two-part test. *Id.* at 210. First, the Court held that Plaintiffs could have brought suit under ERISA because their causes of action were premised on a denial of benefits. *Id.* at 211. Second, the Court determined that the duty imposed on Defendants by Texas law did not "arise independently of ERISA or the plan terms." *Id.* at 212. Because both prongs of the two-part test were satisfied, the Court concluded that Plaintiffs' claims were preempted and "limited [to] remedies available under ERISA. *Id.* at 215.

Here, Appellant's state law wrongful death claim satisfies the two-part test under *Davila*, and is therefore preempted. First, Appellant could have brought her claim under ERISA as a denial of benefits. Appellant's Complaint alleges that although Mrs. Dashwood was prescribed vancomycin to treat her infection, Willoughby RX switched the medication to Bactrim pursuant to the terms of the plan's formulary. Compl. at 3–4. Therefore because Appellant could have brought a claim under ERISA to recover benefits due to her under the plan, the first prong of the *Davila* test is satisfied.

Second, the predicate duty under Tennessee's law, which serves as the basis for Appellant's wrongful death claim does not "arise independently of ERISA or the plan terms." *Davila*, 542 U.S. at 212. Tennessee Code § 63-1-202 imposes a duty to "dispense medications as prescribed" or obtain "express written authorization" from the treating physician prior to making a switch. Compl. at 1–2, 8. The predicate duty for wrongful death also makes PBMs and pharmacies liable for damages proximately caused by a breach of this duty. *Id.* at 8. However, this duty to dispense medications as prescribed is inextricably tied to the formulary scheme, which is authorized under the SPD. *Id.* at 3. Similarly to the duty at issue in *Davila*, which the Court found did not "arise independently of ERISA or the plan terms," neither does the duty here. *Davila*, 542 U.S. at 212. Because Appellant cannot overcome prong two of the *Davila* test, preemption applies, and Appellant cannot recover compensatory and punitive damages.

D. Despite its nonfiduciary status, Count I against ABC Pharmacy, Inc. is still preempted by ERISA and warrants dismissal.

In *Harris Trust and Sav. Bank v. Salomon Smith Barney, Inc.*, the Supreme Court clarified that ERISA extends authorization to bring suit against nonfiduciary parties who "knowingly participate[]" in a fiduciary breach. 530 U.S. 238, 247 (2000); 29 U.S.C. § 1132(l). Thus because ERISA permits suits against nonfiduciaries, Count I against ABC Pharmacy is not saved by characterizing ABC as a nonfiduciary under the plan.

From the face of the First Amended Complaint, Appellant brought suit against both Willoughby RX and ABC Pharmacy. Compl. at 8. Appellant alleges that Appellee Willoughby RX "was at all relevant times a fiduciary of the Plan," but never alleges the same of ABC Pharmacy. *Id.* at 9. Yet Appellant's factual allegations highlight ABC Pharmacy's role alongside Willoughby RX in switching vancomycin to Bactrim and allegedly misrepresenting Bactrim as the generic form. *Id.* at 4–5. Thus, by Appellant's own admission, ABC Pharmacy—a nonfiduciary—knowingly participated in an alleged fiduciary breach. *Id.* at 5. Therefore, accepting the factual allegations as true, ABC Pharmacy can be sued under ERISA and Count I against this party is barred.

II. THIS COURT SHOULD AFFIRM THE DISTRICT COURT'S DISMISSAL OF APPELLANT'S SECOND CLAIM BECAUSE THE REMEDIES SOUGHT DO NOT CONSTITUTE THE "APPROPRIATE EQUITABLE RELIEF" AUTHORIZED BY ERISA § 502(a)(3).

This Court should affirm the dismissal of Appellant's second claim because the requested relief does not fit the relief permitted under ERISA § 502(a)(3). That

statute authorizes a participant or beneficiary to only seek injunctive relief or "other appropriate equitable relief" to redress violations of ERISA or the terms of a plan. 29 U.S.C. § 1132(a)(3). Although § 502(a)(3) may provide relief for harms arising from fiduciary breaches pertaining to an ERISA plan, the Supreme Court has clarified that § 502(a)(3) does not function as a general method for monetary recovery. *See Varity Corp. v. Howe*, 516 U.S. 489, 507 (1996); *Mertens v. Hewitt Assocs.*, 508 U.S. 248, 255 (1993) ("money damages are… the classic form of *legal* relief").

The phrase "equitable relief" means only those remedies "typically available in equity," and excludes legal or compensatory damages even where fiduciary misconduct is alleged. *Mertens*, 508 U.S. at 248–49; 255. As the Supreme Court has explained, the remedies that were "*typically* available in equity" do not include "compensatory damages," but only do encompass the remedies of "injunction, mandamus, and restitution." *Id.* at 256–58; *see also Davila*, 542 U.S. at 222 (Ginsburg, J., concurring). Therefore, a plaintiff states a claim for relief under § 502(a)(3) only if the remedy sought is equitable in its basis and its nature, thus falling within the limited category of relief Congress authorized. *Sereboff v. Mid Atl. Med. Servs., Inc.*, 547 U.S. 356, 363–64 (2006).

Not all restitutionary relief is also equitable. *Great-W. Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 212–13 (2002). Where the relief sought would impose personal liability to simply pay money, rather than restore specific, identifiable

property belonging in good conscience to the plaintiff, it constitutes legal relief outside the scope of § 502(a)(3). *See id*; Restatement of Restitution § 160. Thus, restitutionary relief is equitable only when the plaintiff seeks to recover specific, identifiable funds or property in the defendant's possession, as opposed to imposing personal liability payable from the defendant's general assets. *See id.*

Allegations of fiduciary misconduct do not expand the scope of relief authorized by ERISA § 502(a)(3), reflecting Congress's goal of providing an exclusive remedy under ERISA. *See Davila*, 542 U.S. at 217–18. As the Supreme Court explained, "[t]he policy choices reflected in the inclusion of certain remedies and the exclusion of others under the federal scheme would be completely undermined if ERISA-plan participants and beneficiaries were free to obtain remedies under state law that Congress rejected in ERISA." *Id.* (internal citations omitted). Thus, even where fiduciary misconduct is alleged, equitable relief under § 502(a)(3) is appropriate only when Congress has not otherwise foreclosed relief; "where Congress elsewhere provided adequate relief for a beneficiary's injury, there will likely be no need for further equitable relief, in which case such relief normally would not be 'appropriate.'" *See Varity*, 516 U.S. at 515 (internal citations omitted)

Here, Appellant's claim fails because ERISA § 502(a)(3) limits relief to a narrow set of equitable remedies. Appellant cannot state a claim under § 502(a)(3) unless the relief sought falls within the limited category of remedies Congress authorized. The Plan at issue here is an employer-sponsored ERISA welfare plan,

and Appellant expressly invokes § 502(a)(3) as the sole basis for relief. Therefore, the viability of Appellant's claim turns entirely on whether the remedies sought qualify as "appropriate equitable relief" under ERISA.

Appellant alleges that Appellees breached their fiduciary duties by acting disloyally in administering plan benefits, but the nature or seriousness of the alleged misconduct does not alter the scope of relief Congress authorized in § 502(a)(3). Because § 502(a)(3) does not permit recovery simply based on the seriousness of alleged misconduct, and because Appellant's requested remedies do not fall under ERISA, Appellant has not stated a claim for relief.

A. Appellant's request for monetary relief does not fall within the narrow, equitable circumstances in which § 502(a)(3) permits such relief.

Appellant's request for monetary relief falls outside the narrow category of equitable relief authorized by ERISA § 502(a)(3). The Supreme Court has distinguished permissible equitable restitution from impermissible money damages under ERISA § 502(a)(3). As the Court explained in *Mertens v. Hewitt Associates*, when plaintiffs seek "monetary relief for all losses their plan sustained as a result of the alleged breach of fiduciary duties," they are seeking "compensatory damages," which are the "classic form of legal relief." 508 U.S. at 255. Section 502(a)(3)'s authorization of "other appropriate equitable relief" precludes "compensatory or punitive damages," even where fiduciary misconduct is alleged. *See id.*

Suits seeking to compel a defendant to "pay a sum of money to the plaintiff" are "almost invariably" actions for legal damages, not equitable relief. *Knudson*, 534

U.S. at 210 (internal citations omitted). Monetary relief is equitable only where it seeks to restore "specifically identified funds" in the defendant's possessions or traceable items that the defendants purchased with the funds. *See Montanile v. Bd. of Trs. of Nat. Elevator Indus. Health Benefit Plan*, 577 U.S. 136, 137 (2016). Otherwise, if the plaintiff seeks to recover against the defendant's "general assets," that is a legal remedy—not an equitable one. *See id.* at 145.

Here, the monetary relief Appellant seeks are legal damages, not equitable relief. Appellant's requested relief mirrors the relief rejected in *Mertens*, where plaintiffs sought monetary compensation for losses resulting from an alleged fiduciary breach, and the Supreme Court held such relief barred under § 502(a)(3). The relief Appellant seeks here would impose personal liability payable from Appellees' general assets, rather than restore specific, identifiable funds; after all, Appellant has not identified any specific funds or property in Appellees' possession that allegedly belong to her. Because Appellant seeks loss-based monetary recovery rather than relief traditionally available in equity, the district court correctly dismissed her second claim.

B. Appellant's request for loss-based surcharge seeks compensatory damages and thus falls outside the equitable relief authorized by ERISA § 502(a)(3).

Appellant's request for loss-based surcharge seeking compensation qualifies as legal damages, not equitable relief, and is therefore unavailable under ERISA § 502(a)(3). Because § 502(a)(3) authorizes only relief that was "typically available in equity," courts may not award monetary relief that functions to compensate a

plaintiff for loss, even if styled as an equitable remedy. *See Mertens*, 508 U.S. at 248. The Sixth Circuit has reaffirmed this principle, holding that an "equitable surcharge" for a beneficiary's losses qualifies as a damages remedy that *Mertens* does not permit ERISA plaintiffs to recover under § 502(a)(3). *See Aldridge v. Regions Bank*, 144 F.4th 828, 834; 847 (6th Cir. 2025) (the party seeking 'equitable surcharge' was "merely request[ing] damages under another label") (internal citations omitted).

The *Aldridge* court rejected a plan participant's request for monetary relief, holding that § 502(a)(3) "does not permit plan participants to seek monetary relief from fiduciaries for the losses that they suffer because of the fiduciaries' breach of their duties." *Id.* at 849. Thus, surcharge and damages are "essentially equivalent" because both describe "monetary relief" awarded to compensate a plaintiff for losses allegedly caused by the defendant. *Id.* at 848. Such relief was not typically available in equity, and it therefore falls outside the scope of § 502(a)(3). *Id.* at 847.

Courts consistently reject attempts to recast compensatory damages as equitable surcharge under ERISA § 502(a)(3). Equitable restitution is distinguished from legal damages by its focus on the defendant's gain rather than the plaintiff's loss. *Rose v. PSA Inc.*, 80 F.4th 488, 499 (4th Cir. 2023) (explaining that equitable restitution, unlike legal damages, is "measured by defendant's gains, not by plaintiff's losses" (internal citations omitted)). Because ERISA incorporates only those equitable remedies available in concurrent-jurisdiction cases, exclusive-

jurisdiction remedies—like surcharge-– do not qualify as "appropriate equitable relief'" when they function as loss-based compensation. *Id.* at 500. A plaintiff may recover money under § 502(a)(3) only where a court of equity could have awarded such relief by restoring specific funds or property that "belong[] in good conscience" to the plaintiff and are in the defendant's possession. *Id.* at 501 (citing *Knudson*, 534 U.S. at 213). Thus, courts cannot award a plaintiff relief that "amounts to personal liability paid from the defendant's general assets to make the plaintiff whole." *Id.* at 502.

Appellant's surcharge theory mirrors the impermissible claims rejected in *Mertens* and *Aldridge*. Appellant's surcharge remedy seeks to recover damages including the loss of Mrs. Dashwood's lifetime earnings due to her death. Her Amended Complaint seeks equitable relief surcharging Willoughby Health and Willoughby RX for "direct financial harm" suffered by Appellants due to Appellees' alleged fiduciary breaches. In *Mertens*, the plaintiff sought monetary compensation to make the plan whole for losses allegedly caused by fiduciary misconduct, and the Supreme Court held that such relief was barred because it constituted compensatory damages. Similarly, in *Aldridge*, the plaintiffs sought surcharge measured by the beneficiary's losses, and the Sixth Circuit held that such relief was unavailable under § 502(a)(3) because it sought to impose personal liability for monetary loss. Here, Appellant likewise seeks surcharge measured by alleged harm—including economic loss and death-related damages—designed to make

Appellant whole. That relief would impose personal liability payable from Appellees' general assets, rather than restore specific property traditionally recoverable in equity.

Like the *Aldridge* and *Rose* courts held, calling compensatory damages "surcharge" does not transform legal relief into equitable relief; courts focus on the substance of the remedy, not its label. Because Appellant's surcharge claim seeks loss-based monetary recovery rather than relief typically available in equity, it does not fall within the narrow category of remedies authorized by § 502(a)(3), and it must be dismissed.

C. Appellant's disgorgement claim fails because it does not identify specific, traceable funds, as required for equitable relief under ERISA § 502(a)(3).

Because Appellant's disgorgement claim does not identify specific, traceable funds, it does not qualify as "appropriate equitable relief" under § 502(a)(3). According to the district court in this case, Appellant's disgorgement claim is essentially a request for restitution. Both restitution and disgorgement "operate in the same manner in a court of equity." *See Fed. Trade Comm'n v. Elec. Payment Sols. of Am. Inc.*, 482 F. Supp. 3d 921, 928 (D. Ariz. 2020). Generalized disgorgement is unavailable under § 502(a)(3) without allegations that identify specific, traceable funds belonging in good conscience to the plaintiff and currently in the defendant's possession. *See Knudson*, 534 U.S. at 213 (plaintiff could seek "money or property identified as belonging in good conscience to the plaintiff" that

"could clearly be traced to particular funds or property in the defendant's possession").

Appellant's disgorgement theory fails under these principles because it does not target specific, traceable funds. Rather than alleging that Appellees possess identifiable money or property belonging in good conscience to Appellant, Appellant alleges only generalized cost savings and rebates, without identifying any particular funds or property. Appellant does not allege that such funds were traceable or remain in Appellees' possession. Like *Knudson*, in which the Court rejected a claim seeking reimbursement from a defendant's general assets, Appellant here similarly seeks a monetary recovery that is not linked to any specific property. And unlike *Montanile*, where equitable relief failed simply because the identifiable funds had been dissipated, Appellant here never identifies any traceable funds at all. Because Appellant's disgorgement claim would require this Court to enter a money judgment imposing personal liability, rather than restoring specific property, the relief sought is legal—not equitable—and is unavailable under ERISA § 502(a)(3).

D. This Court should affirm the dismissal of Appellant's second claim because Appellant seeks remedies ERISA does not authorize.

The district court correctly dismissed Appellant's second claim because the remedies she seeks are not authorized under ERISA § 502(a)(3). Regardless of how the claim is framed, Appellant seeks monetary recovery designed to compensate for alleged loss and to impose personal liability on Appellees—which is not authorized under § 502(a)(3). Appellant has not identified any specific, traceable property that

qualifies as equitable relief. Rather, Appellant's surcharge and disgorgement requests are alternative labels for the same improper outcome: a monetary judgment payable from Appellees' general assets. Because ERISA's exclusive remedial scheme does not allow recovery of such funds, Appellant has failed to state a claim under § 502(a)(3), and the district court correctly dismissed the second claim.

CONCLUSION

This Court should affirm the district court's finding that Appellant's wrongful death claim is preempted by ERISA. Section 514(a) of ERISA is deliberately expansive to preempt any state law that relates to an employee benefits plan. Appellant's wrongful death suit clearly relates to her benefits plan because it challenges the mechanism of administering benefits as inconsistent with state law. Because preemption applies, Appellant is foreclosed from seeking compensatory and punitive damages under Section 502(a), and this Court should affirm the grant of the motion to dismiss.

This Court should also affirm the district court's dismissal of Appellant's second claim. ERISA § 502(a)(3) authorizes only narrow forms of equitable relief, and Appellant seeks monetary recovery that would impose personal liability rather than restore specific, identifiable property. Appellant's surcharge and disgorgement theories are alternative labels for the same impermissible result: compensatory damages payable from Appellees' general assets. Because the remedies sought fall outside the limited relief Congress authorized, Appellant has failed to state a claim

under § 502(a)(3), and this Court should affirm the dismissal of Appellant's second claim.

Dated January 22, 2026.