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 HEALTHCARE CO., WILLOUGHBY RX, and ABC PHARMACY, INC.,

Appellees.

On Appeal from the United States District Court

for the Eastern District Court of Tennessee

BRIEF FOR THE APPELLANT

DATE: January 23, 2026

Team Nine
Counsel for Appellant

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STATEMENT OF THE ISSUES

I. Whether a state law wrongful death claim is preempted under ERISA's preemption clause when such claim relies upon a state law requiring pharmacies and pharmacy benefit managers to obtain authorization from a treating physician prior to changing prescribed medications.

II. Whether the district court erred in dismissing Ms. Dashwood's ERISA § 502(a)(3) fiduciary-breach claim at the pleading stage by mischaracterizing the equitable relief sought as impermissible compensatory damages and prematurely foreclosing equitable remedies that require factual development.

STATEMENT OF THE CASE

This action arises from the dismissal of a wrongful death claim brought by Plaintiff-Appellant, Elinor Dashwood, on behalf of the Estate of her sister, Marianne Dashwood, and a class of similarly situated plan participants. First Am. Compl. at 1. First, this case concerns whether Defendant-Appellee—an administrator and plan insurer of the Employee Retirement Income Security Act ("ERISA"), its pharmacy benefit manager subsidiary, and an affiliated national pharmacy chain—may escape liability for a wrongful death action under both Tennessee law and ERISA after substituting a prescribed antibiotic with a cheaper formulary drug to which Marianne Dashwood had a documented, severe allergy, resulting in her unfortunate and untimely death. Id. Second, the concerns whether the district court erred in dismissing Ms. Dashwood's ERISA § 502(a)(3) fiduciary-breach claim at the pleading stage by mischaracterizing the equitable relief sought as impermissible legal damages and prematurely foreclosing traditionally available equitable remedies, including surcharge and disgorgement.

Plaintiff asserted two claims in her First Amended Complaint: (1) a Tennessee wrongful-death claim against Willoughby RX and ABC Pharmacy based on a claim for unlawful medication substitution; and (2) an ERISA fiduciary-breach claim against Willoughby Health Care and Willoughby RX under ERISA §§ 404 and 502(a)(3), seeking declaratory and equitable relief—including surcharge and disgorgement—for Defendant-Appellees' unjust enrichment from profits generated and rebates received through the Plan's formulary drug substitution. Id. at 8-11.

At the time of her death, Marianne Dashwood was a participant in the Cottage Press Healthcare Plan, an employee welfare benefit plan governed by ERISA. Id. at 2-3. The Plan was fully insured and administered by Appellee, Willoughby Health Care Company, which possessed

discretionary authority to determine eligibility for benefits and to decide claims. Id. at 3. With respect to prescription drugs, Willoughby Health delegated claims-administration authority to its wholly owned subsidiary, Appellee Willoughby RX, a pharmacy benefit manager ("PBM") that developed and applied a formulary of preferred medications. Id. Appellee ABC Pharmacy, a nationwide retail pharmacy chain, was acquired by Willoughby RX in 2021 and operated under the same corporate umbrella of Willoughby Health. Id. at 3-4.

In December 2024, after sustaining a cut while hiking, Marianne Dashwood developed a serious infection. Id. at 4. She was hospitalized at Johnson City Hospital Center, where physicians diagnosed her with a life-threatening staph infection known as MRSA. Id. Marianne was intravenously treated with the antibiotic vancomycin for five days and responded well. Marianne had a well-documented allergy to sulfonamide drugs and had suffered a severe allergic reaction to such medication in 2022. Id. at 5. She informed her medical providers of this allergy, which was one reason vancomycin was selected for her treatment. Id. at 4-5.

Upon her discharge, her treating physicians prescribed a five-day course of vancomycin to complete her treatment. Id. 4. Appellant, Elinor Dashwood, immediately took the vancomycin prescription to an ABC Pharmacy location in Johnson City. Id. Rather than dispensing vancomycin, the pharmacy provided a five-day supply of Bactrim. Id. When Elinor questioned the discrepancy, the pharmacist stated that Marianne's insurance company had switched the prescription and incorrectly represented that Bactrim was the generic equivalent of vancomycin. Id. at 4-5.

Unknown to Appellant, however, Bactrim is not a generic version of vancomycin. Notably, Bactrim belongs to the sulfonamides class of drugs, to which Marianne had a documented allergy. Id. at 5. Neither Willoughby Health, Willoughby RX, nor ABC Pharmacy

consulted Marianne's prescribing physician before switching the Vancomycin treatment for Bactrim. Id. In fact, Willoughby RX and ABC Pharmacy routinely substituted prescribed drugs with preferred formulary alternatives without physician authorization, motivated by cost savings and manufacturer rebates. Id. After taking Bactrim for just over a day, Marianne suffered a severe allergic reaction and died in an ambulance while being transported back to the hospital, leaving her young son an orphan. Id.

Appellant filed this action in the United States District Court for the Eastern District of Tennessee, asserting a state-law wrongful death claim against Willoughby RX and ABC Pharmacy, in addition to an ERISA fiduciary-breach claim against Willoughby Health and Willoughby RX. Id. at 8-11. Appellees moved to dismiss under Federal Rule of Civil Procedure 12(b)(6), for failure to state a claim upon which relief can be granted. Mem. Op. & Order at 6. With respect to Count I, Appellees purported that the state-law wrongful death action was preempted under Section 514(a), 29 U.S.C. § 1144(a)—ERISA's preemption provision. Id. With respect to Count II, Appellees contended that Appellant failed to seek relief available under ERISA § 502(a)(3). Id.

The United States District Court for the Eastern District of Tennessee granted Appellees' motion in its entirety and dismissed both claims with prejudice under Rule 12(b)(6), holding that ERISA preempted the state-law wrongful death claim and that Appellant failed, as a matter of law, to seek relief "typically available in equity" under ERISA § 502(a)(3). Id. at 1, 14-15. The District Court determined that the wrongful-death claim "relate[d] to" ERISA plan administration and sought remedies that Congress deliberately chose not to authorize under ERISA, rendering the claim preempted. Id. at 10–11. The court further held that Appellant's ERISA claim failed because the requested surcharge amounted to impermissible compensatory

damages, and the request for disgorgement did not identify specifically traceable funds in Defendants' possession. Id. at 13–15. Appellant timely filed this appeal to the Court of Appeals for the Sixth Circuit.

SUMMARY OF THE ARGUMENT

The State of Tennessee seeks to ensure the protection of its patients by requiring Pharmacy Benefit Managers (PBMs) and pharmacies to obtain authorization from a patient's treating physician prior to switching a prescribed medication. Here, the Appellees failed to comply with the duty placed upon them by Tennessee's law, resulting in the untimely and avoidable death of Ms. Marianne Dashwood. This Court should reverse the decision of the District Court of the Eastern District of Tennessee to dismiss the Appellant's wrongful death claim with prejudice for failure to state a claim upon which relief can be granted. First, the Appellant's wrongful death action does not fall under ERISA's preemption clause because the state law from which the claim arises does not relate to ERISA.

The Appellant's wrongful death action arising from a Tennessee state law does not require preemption under ERISA. ERISA's preemption clause provides that ERISA "shall supersede any and all state laws insofar as they may now or hereafter relate to any employee benefit plan." 29 U.S.C. § 1144(a). However, ERISA's preemption clause is limited to state laws that impermissibly relate to employee benefit plans. In determining whether a state law relates to ERISA, the law must demonstrate a reference to or a connection with an ERISA-governed employee benefit plan. To exhibit a reference to ERISA, the state law must act immediately and exclusively upon ERISA-governed plans, or the existence of an ERISA plan must be essential to the law's operation. Concerning a connection with ERISA, state law requires preemption where Congress intended for ERISA to dominate. Therefore, a connection with ERISA exists where the state law governs a central matter of plan administration or interferes with nationally uniform plan administration.

In this case, the Tennessee statute does not evince an impermissible reference to ERISA. First, the law does not act immediately and exclusively upon ERISA-governed plans, as the law

imposes a requirement on all PBMs and pharmacies within Tennessee, not just those governed under ERISA. Additionally, the state statute does not require an ERISA-governed plan for its operation, as the law does not rely upon ERISA to define its terms, and nothing indicates that the functionality of the duty imposed by the statute relies upon ERISA. Therefore, the Tennessee law does not contain a reference to ERISA.

Moreover, the Tennessee law does not maintain a prohibited connection with ERISA. The Tennessee statute is not of the variety that Congress sought to supersede by enacting ERISA because it does not govern central matters of plan administration, such as the structure of plans and distribution of benefits. Instead, the Tennessee law regulates healthcare and professional standards—an area traditionally reserved for the states' governance. Additionally, the statute does not interfere with ERISA's intention to provide nationally uniform plan administration, as it does not purport a requirement for an administrative scheme different from that required by ERISA. Thus, the Tennessee law does not exhibit a connection with ERISA.

Furthermore, the district court erred in dismissing Ms. Dashwood's ERISA § 502(a)(3) fiduciary-breach claim at the pleading stage. Section 502(a)(3) functions as ERISA's "catchall" provision, authorizing equitable relief where no other ERISA provision adequately remedies or redresses fiduciary misconduct. Because § 502(a)(1)(B) permits recovery only of benefits due under the terms of the plan, it cannot redress the Willoughby Defendants' systemic disloyalty and self-interested fiduciary misconduct. Accordingly, under established precedent, provision § 502(a)(3) of ERISA remains available to provide appropriate relief to Ms. Dashwood and the similarly situated class and to ensure that Defendants' fiduciary breaches do not escape judicial review.

The district court further erred by categorically mischaracterizing the equitable relief Ms. Dashwood seeks as impermissible legal damages. Supreme Court precedent makes clear that monetary relief may be equitable when imposed on fiduciaries to enforce duties of loyalty and prudence or to prevent unjust enrichment. Remedies such as surcharge, disgorgement, restitution, and equitable liens were traditionally available in equity and do not lose their equitable character merely because they involve money, especially when used for the purpose of preventing unjust enrichment. By dismissing Ms. Dashwood's claim based on the *form* of relief, rather than its equitable purpose, the district court misapplied settled law governing ERISA fiduciary remedies and prematurely foreclosed relief that courts of equity have long recognized.

Finally, the district court improperly resolved fact-dependent tracing and dissipation questions on an undeveloped Rule 12(b)(6) record. While the district court reasoned that Ms. Dashwood's claim for disgorgement did not seek to recover specifically identifiable funds, there is nothing in the record to support this conclusion. In fact, the Supreme Court has held that whether funds remain identifiable, traceable, or have been dissipated is a factual inquiry that cannot be assumed or decided without discovery. Supreme Court precedent instructs that such determinations turn on what actually happened to the funds and thus must be resolved on a developed record, not at the pleading stage. By dismissing Ms. Dashwood's disgorgement claim based on unresolved factual assumptions, under Rule 12(b)(6), the district court committed the very procedural error that the Supreme Court cautioned against.

Because the district court misapplied ERISA § 502(a)(3), mischaracterized the nature of equitable relief that Ms. Dashwood sought, and prematurely resolved factual questions reserved for later stages of litigation, this Court should reverse the dismissal and remand for further proceedings.

ARGUMENT

I. The Appellant's wrongful death action is not preempted by the Employee Retirement Income Security Act of 1974, as the state law from which the claim arises does not relate to an ERISA-governed employee benefits plan.

Where a wrongful death claim relies upon a state-law that does not relate to ERISA, preemption is unwarranted and cannot act as a barrier to legal redress. The Appellant's claim does not relate to ERISA because it arises from a Tennessee statute requiring pharmacies and pharmacy benefit managers (PBMs) to obtain authorization from a treating physician prior to substituting prescribed medications for another drug. The Appellant's claim does not relate to ERISA, as it neither references nor exhibits a connection to an ERISA-governed benefit plan. Therefore, the United States District Court for the Eastern District of Tennessee improperly dismissed with prejudice the Appellant's wrongful death action.

The preemption clause of ERISA provides that ERISA "shall supersede any and all state laws insofar as they may now or hereafter relate to any employee benefit plan." 29 U.S.C. § 1144(a). However, the Supreme Court of the United States has limited the breadth of the preemption provision, as ERISA remains subject to "the starting presumption that Congress does not intend to supplant state law." N.Y. State Conf. of Blue Cross & Blue Shield Plans v. Travelers Ins. Co., 514 U.S. 645, 654 (1995). Thus, absent clear congressional intent to pre-empt state law, ERISA will not be deemed to supersede state actions in fields of traditional state regulation." Id. Hence, the ERISA's preemption clause applies only where state laws "relate . . . to any employee benefit plan." Id. at 651. A state law "relates to" an employee benefit plan "if it has a connection with or a reference to such a plan." Rutledge v. Pharm. Care Mgmt. Ass'n, 592 U.S. 80, 88-89 (2020).

In the case at bar, the Appellant's wrongful death action is not subject to ERISA's preemption clause. Under Tennessee state law, the Appellees, Willoughby RX and ABC Pharmacy, owed a duty to Ms. Marianne Dashwood to obtain authorization from her treating physician prior to switching her prescribed medication. Here, the Appellant's claim is not related to ERISA, as the state-law upon which it is based does not maintain an impermissible reference to or connection with an ERISA-governed plan. Therefore, the wrongful death action does not fall under ERISA's preemption clause. Thus, this Court should reverse the judgment of the United States District Court for the Eastern District of Tennessee.

A. The Appellant's wrongful death action was not brought under a state law with an impermissible relation to ERISA, as the law does not reference ERISA-governed plans.

The Appellant's state-law wrongful death action does not impermissibly relate to ERISA because the Tennessee law from which the claim arises does not reference ERISA governed-plans. An impermissible "reference to" ERISA appears where a state law is enacted to directly affect plans falling within ERISA's domain. Rutledge, 592 U.S. 80, 88-89 (2020). The Supreme Court of the United States has explained that such reference is present where a state law acts "immediately and exclusively upon ERISA plans, or where the "existence of ERISA plans is essential to the law's operation." Gobeille v. Liberty Mut. Ins. Co., 577 U.S. 312, 319-20 (2016). In this case, the Tennessee law neither acts immediately and exclusively upon ERISA-governed plans, nor depends on ERISA-governed plans for its operation. Rather, the state law applies to all pharmacy benefit managers ("PBMs"), regardless of their relationship to ERISA-governed plans. As the Tennessee statute makes no reference to ERISA, it does not demonstrate a prohibited relation to ERISA. Accordingly, the Appellant's state-law wrongful death action is not preempted.

Preemption is unwarranted where a state law does not act immediately and exclusively upon plans governed by ERISA. In Rutledge, Arkansas enacted a law that placed regulations on PBMs' maximum allowable cost lists, which set reimbursement rates for pharmacies that dispensed generic medications. Rutledge, 592 U.S. at 84-85. The Supreme Court of the United States held the Arkansas law did not exhibit a reference to ERISA because it did not act immediately and exclusively upon ERISA-governed plans. Id. at 88. The Court reasoned that the law applied to PBMs regardless of whether they managed ERISA plans. Id. Indeed, the Arkansas law did not directly regulate health benefits at all, whether governed by ERISA or otherwise. Id. at 88-89. Rather, the law affected employee benefit plans only insofar as PBMs could pass along higher pharmacy reimbursement rates to the plans that they contracted with. Id. Thus, the law did not reference ERISA and was therefore not preempted. Id.

Moreover, a state law does not make an impermissible reference to ERISA where ERISA-governed plans are inessential to its operation. Id. at 88. In Rutledge, the Arkansas law defined a PBM as "an entity that administers or manages a pharmacy benefits plan or program," rendering the law applicable to any plan or program involved in the payment of pharmacological services to individuals residing or employed in Arkansas. Id. at 89. The Court determined that the Arkansas law did not demonstrate an impermissible ERISA reference because ERISA-governed plans were inessential to the law's operation. Id. Because the law regulated PBMs regardless of whether they fell within ERISA's coverage, it was not preempted under the "reference to" test. Id.

Here, the Tennessee law does not act immediately and exclusively upon ERISA-governed plans. The state law prohibits pharmacies and PBMs from substituting prescribed medications absent express written authorization of the patient's treating physician and imposes penalties for

failing to comply. First Am. Compl. at 1-2. Like the Arkansas law in Rutledge, the Tennessee law bestows a duty upon all PBMs and pharmacies, regardless of whether they are managed by ERISA-governed plans. Id. Additionally, like the law in Rutledge, the Tennessee statute merely provides a duty in the interest of patient protection—it does not directly regulate health benefits. Id. Accordingly, the Tennessee law does not make an impermissible reference to ERISA.

Further, the Tennessee law does not require an ERISA-governed plan for its operation. In this case, the term "PBM" is defined within the Tennessee law that provides the required duty for all PBMs and pharmacies. Id. Notably, nothing indicates that the statute's functionality depends on ERISA—in the absence of an ERISA-governed plan, the law remains operable. Id. Under the precedent set forth in Rutledge, ERISA-governed plans are not essential to the Tennessee law's operation. See Rutledge 592 U.S. at 84-85. Like the Arkansas law, Tennessee's statute does not rely on ERISA's language to define its terms, nor does its functionality depend upon ERISA-governed plans. First Am. Compl. at 1-2. Thus, the Tennessee law does not make an impermissible reference to ERISA, as an ERISA-governed plan is inessential to its operation. Therefore, the Tennessee law does not fall under ERISA's preemption clause, as the state statute does not make an impermissible reference to ERISA.

B. The Tennessee law upon which the action rests does not relate to ERISA, as it does not demonstrate an impermissible connection with ERISA-governed employee benefit plans.

ERISA's preemption clause does not apply to the Appellant's wrongful death claim because it does not demonstrate a prohibited connection to an ERISA-governed plan. In ascertaining whether a state law has an "impermissible connection" with an ERISA plan, the Supreme Court considers ERISA's objectives "as a guide to the scope of the state law that Congress understood would survive." Rutledge, 592 U.S. at 86 (quoting California Div. of Labor

Standards Enforcement v. Dillingham Constr., N.A., Inc., 519 U.S. 316, 317 (1997)). Congress' goal in enacting ERISA was to "make the benefits promised by an employer more secure by mandating certain oversight systems and other standard procedures." Gobeille, 577 U.S. at 320-21. Therefore, an impermissible connection exists—and preemption is required—where state law "governs a central matter of plan administration" or "interferes with a nationally uniform plan administration." Id. at 320. In this case, the Tennessee statute upon which the Appellant's claim is situated concerns the regulation of professional standards—an area that does not affect a central matter of plan administration. Further, the Tennessee law does not disrupt a nationally uniform plan of administration, as it does not impose state-specific regulations on plan administrators. Accordingly, the Tennessee law does not demonstrate a connection with ERISA and is thereby not subject to preemption.

1. The Tennessee statute does not govern a central matter of plan administration.

Where a state law directly impacts an ERISA-governed plan's benefit structure, the law demonstrates an impermissible connection with ERISA. In Shaw, New York enacted two statutes: one disallowing discrimination in employee benefit plans on the basis of pregnancy, and another requiring employers to pay sick-leave benefits to employees unable to work because of pregnancy or other nonoccupational disabilities. Shaw v. Delta Airlines, Inc., 463 U.S. 85, 88 (1983). The Supreme Court held that the statutes "related to" ERISA because they restricted employers' ability to structure their employee benefit plans, as they could no longer discriminate on the basis of pregnancy and were required to provide specific benefits. Id. at 96-97. Therefore, the state laws were preempted by ERISA due to their restriction on a central matter of plan administration. Id. at 96-97, 108.

In this case, the Tennessee law does not directly affect ERISA-governed employee benefit plan administration. The Tennessee statute requires PBMs and pharmacies to obtain authorization from a patient's treating physician prior to substituting their prescribed medication with a different drug. First Am. Compl. at 1-2. Unlike the New York laws at issue in Shaw, the duty established under the Tennessee statute does not restrict employers' abilities to structure benefit plans. See Am. Compl. at 1-2. Rather, it imposes a small requirement on PBMs and pharmacies to ensure that a substituted medication is safe for the patient. Id. The statute does not require changes to a plan's formulary list of preferred drugs. Id. In fact, once prescriber authorization is acquired, pharmacies and PBMs may dispense medications in accordance with their existing formularies. Id. Therefore, the Tennessee law does not govern a central matter of plan administration.

Notably, preemption is unseemly where state laws exert only a small or indirect economic effect on ERISA plans. In Travelers, a New York statute required hospitals to collect surcharges from patients receiving coverage from commercial insurers, but not from patients insured by a Blue Cross/Blue Shield plan, exposing certain insurers that acted as fiduciaries for ERISA benefit plans to surcharges. N.Y. State Conf. of Blue Cross & Blue Shield Plans v. Travelers Ins. Co., 514 U.S. at 649. The Supreme Court held that the law did not demonstrate an impermissible connection to an ERISA plan, as the surcharge statute caused only an indirect economic effect on plan administration. Id. at 668. The Court reasoned that the law did not compel plan administrators to make certain choices or prevent uniform administrative practices. Id. at 659-60. Rather, the statute merely effected the costs of benefits and the relative cost of competing insurance plans. Id. at 659. Nothing indicates that Congress intended cost uniformity as a requirement of ERISA. Id. at 661-62. Moreover, Congress left intact other state actions with

indirect economic effects on plan costs—such as quality control standards and workplace regulation—demonstrating that indirect economic influences on ERISA-governed plans do not create a connection with ERISA. Id. at 661.

Here the Tennessee law exerts, at most, a small and indirect effect on ERISA-governed benefit plans. Like the New York statute in Travelers, the Tennessee statute does not force particular benefit administration decisions upon plan administrators. See First Am. Compl. at 1-2. Instead, it merely requires pharmacies and PBMs to obtain authorization from a patient's treating physician before substituting a prescribed medication with one listed as preferred in the plan's formulary. First Am. Compl. at 1-2. This requirement adds only a small step in the administration process and its economic impact is minimal. The authorization requirement for medication substitution does not require changes to plan benefits or formularies, nor does it impose vast additional costs on benefit plans. See First Am. Compl. at 1-2. Moreover, the Tennessee statute resembles a quality control standard, for which Congress has left these types of state laws intact, despite their indirect influences on ERISA plans. See Am. Compl. at 1-2. Therefore, the Tennessee statute does not govern a central matter of plan administration and does not evince an impermissible connection to ERISA.

Additionally, an impermissible connection exists where a state-law action complains of a denial of benefits from an ERISA-governed employee benefits plan. In Davila, a participant in an ERISA-governed employee benefit plan sued under a Texas law for injuries they suffered due to the plan administrator's denial of coverage for physician-recommended treatments. Aetna Health Inc. v. Davila, 542 U.S. 200, 204-05 (2004). The Supreme Court determined that the participant's claim required preemption due to its impermissible connection with ERISA. The Court explained that an impermissible connection existed because the claims were brought only to redress a

wrongful denial of benefits promised under an ERISA-regulated plan and did not attempt to remedy a violation of a legal duty independent of ERISA. Id. at 210. Therefore, the preemption clause is invoked where a state-law action is situated upon a denial of benefits from an ERISA-governed plan. Id. at 214. See e.g., Spain v. Aetna Life Ins. Co., 11 F.3d 129, 131 (9th Cir. 1993); Tolton v. American Biodyne, Inc., 48 F.3d 937, 943 (6th Cir. 1995); Turner v. Fallon Cmty. Health Plan, Inc., 127 F.3d 196, 198 (1st Cir. 1997); Corcoran v. United Healthcare, Inc., 965 F.2d 1321, 1331 (5th Cir. 1992).

However, claims brought concerning the quality of benefits received do not exemplify an impermissible connection with ERISA. In Dukes, representatives of ERISA plan beneficiaries brought medical negligence actions against Health Maintenance Organizations (HMOs) after the beneficiaries had perished. Dukes v. U.S. Healthcare, Inc., 57 F.3d 350, 352 (3d Cir. 1995). The Third Circuit held that the medical negligence claims did not establish a prohibited connection with ERISA because they challenged the quality of the benefits received, not the denial of the benefits themselves. Id. at 357. The court explained that ERISA's statutory text is silent as to claims addressing the quality of benefits received. Id. Turning to congressional intent, the court concluded that Congress intended for ERISA to provide remedies for failures to honor plan promises, not to regulate the quality of medical care. Id. Nothing in ERISA's legislative history suggests that Congress sought to exercise quality control over benefits—a field traditionally regulated by the states that Congress intended to leave undisturbed by its silence. Id. Accordingly, claims concerning the quality of benefits received are not preempted under ERISA. Id.

Here, the Appellant's wrongful death claim does not complain of a denial of benefits. Unlike Davila, the gravamen of the Appellant's claim is not a denial of coverage for physician-

recommended treatments. Mem. Op. & Order at 9; see Davila, 542 U.S. 204-05. Instead, the wrongful death action seeks redress for the Appellees' violation of a legal duty independent of ERISA. Id. That duty is promulgated by Tennessee law, which requires that pharmacies and PBMs obtain authorization from a patient's treating physician before changing a prescribed medication. First Am. Compl. at 1-2. It is undisputed that Appellees, ABC Pharmacy and Willoughby RX, failed to acquire this necessary authorization. See Mem. Op. & Order. Hence, the Appellant does not complain of a denial of benefits under the Plan, but of the deficient quality of the benefit provided—that is, the dispensing of a medication to which Ms. Dashwood had a documented allergy. Mem. Op. & Order at 9; Am. Compl. at 4-5.

In fact, the Appellant's wrongful death claim concerns only the quality of the benefits received by a beneficiary of an ERISA-governed plan. Like the representatives in Dukes, Ms. Dashwood has brought this claim on her sister's behalf—not to contend with a denial of benefits—but rather to contest the quality of the benefits that Ms. Dashwood received. Mem. Op. & Order at 9; see Dukes 57 F.3d at 357. The Appellant maintains that Appellees, ABC Pharmacies and Willoughby RX, failed to comply with the duty imposed by Tennessee law, and that this failure resulted in Ms. Dashwood's death. Id. Specifically, Appellees substituted Bactrim for Vancomycin without obtaining authorization from Ms. Lockwood's treating physician. Id. at 5. This claim does not challenge a denial of benefits. See First Am. Compl. at 1-5. The benefit was provided in the form of a prescription medication—albeit one to which Ms. Lockwood had a known, documented, severe allergy. First Am. Compl. at 4-5. Therefore, the Appellant's claim does not concern a matter of central plan administration and does not trigger ERISA preemption.

2. The Tennessee statute does not interfere with a nationally uniform plan administration.

The ERISA preemption does not apply to state laws centered on areas of traditional state regulation. In Pegram, the Supreme Court recognized that because health care is a field of traditional state regulation, ERISA preemption does not apply absent a clear manifestation of congressional intent. Pegram v. Herdrich, 530 U.S. 211, 236 (2000). However, the Court in Travelers noted that "nothing in the language of the act or the context of its passage indicates that Congress chose to displace general healthcare regulation, which historically has been a matter of local concern." Travelers Ins. Co., 514 U.S. at 661. Therefore, the Supreme Court has exacted a presumption that Congress did not intend to displace state laws in areas traditionally governed by the states. See Travelers Ins. Co., 514 U.S. at 661; see also Pegram v. Herdrich, 530 U.S. at 236. In fact, ERISA's principal objective was to protect plan participants and beneficiaries by ensuring a "nationally uniform administration of employee benefits"—the intent was not to uproot regulation of healthcare quality or professional conduct.

Here, the Tennessee law governs an area of traditional state regulation that Congress did not intend to preempt through enacting ERISA. The Tennessee statute provides the requirement that PBMs and pharmacies acquire authorization from a patient's treating physician prior to substituting their prescribed medications with another drug. First Am. Compl. at 1-2. The heart of this statute is the regulation of healthcare quality and professional conduct, as the statute ensures that PBMs and pharmacies obtain authorization for switched medications before dispensing them. See First Am. Compl. at 1-2. Thus, the wrongful death action is not preempted by ERISA, as it arises from a state law regulating healthcare and professional conduct.

Where a state law subjects employee benefit plans to differing legal obligations, it interferes with ERISA's goal of nationally uniform plan administration. In Egelhoff, Washington State enacted a law that provided for the automatic revocation of any designation of a spouse as a

beneficiary of a non-probate asset upon divorce. Egelhoff v. Egelhoff, 532 U.S. 141, 143 (2001). The Supreme Court held that the statute related to ERISA because it demonstrated an impermissible connection. Id. at 148. The Court reasoned that the statute threatened one of ERISA's principal goals: establishing a uniform administrative scheme with standard procedures for the processing of claims and disbursement of benefits. Because the statute conflicted with ERISA's standard procedures, the statute undermined the uniform administrative scheme ERISA sought to exact. The Court explained that uniformity cannot be achieved where employee benefit plans are subjected to varied legal obligations across states, forcing plan administrators to become well-versed in the applicable laws of all fifty states and to contend with potential litigation. Id. at 148-49. Such requirements directly conflict with Congress's intent of "minimizing the administrative and financial burdens on plan administrators." Id. at 149-50. Differing state regulations affecting plan's claim processing and benefit payment procedures are exactly the type of burden that ERISA intended to avoid. Id. at 150. Therefore, Washington's law demonstrated an impermissible connection with ERISA, as it threated uniform administration. Id.

Here, the recently enacted Tennessee law does not subject employee benefit plans to differing legal obligations. The statute forbids pharmacies and PBMs from substituting prescription medications absent express written authorization of the patient's treating physician and imposes penalties where such authorization fails to be obtained. First Am. Compl. at 1-2. The statute does not provide a private cause of action. Id. Rather, it provides a duty running to patients. Id. Unlike the Washington statute in Egelhoff, the Tennessee law does not purport a unique manner of plan processing or benefit payment procedures that would require plan administrators to learn the relevant legal requirements of all fifty states. Id.; see Egelhoff, 532 U.S. at 148. Instead, the law merely establishes a professional duty for pharmacies and PBMs.

First Am. Compl. at 1-2. Moreover, because the Tennessee law does not provide a private cause of action, concerns that an uptick in litigation will result are greatly diminished. Id. Therefore, the Appellant's claim does not establish an impermissible connection with ERISA and is not subject to preemption.

II. The District Court Erred in Dismissing Ms. Dashwood's § 502(a)(3) Claim of Fiduciary-Breach under the Employee Retirement Income Security Act ("ERISA") by Mischaracterizing the Equitable Relief Sought and Prematurely Foreclosing Available Remedies at the Pleading Stage.

Section 502(a)(3) of the Employee Retirement Income Security Act ("ERISA") authorizes plan participants and beneficiaries to bring forth a civil action to obtain "appropriate equitable relief" to redress violations of ERISA and other breaches of fiduciary duty. 29 U.S.C. § 1132(a)(3). Although ERISA does not allow *legal* damages in the form of money, the Supreme Court has repeatedly recognized that *equitable* relief may take monetary form when imposed on fiduciaries to enforce their duty of loyalty and prudence. CIGNA Corp. v. Amara, 563 U.S. 421, 440-42 (2011); Sereboff v. Mid Atl. Med. Servs., Inc., 547 U.S. 356, 363-64 (2006).

In this case, the United States District Court for the Eastern District of Tennessee departed from these settled principles by categorically treating Ms. Dashwood's request for surcharge as impermissible legal damages and dismissing her disgorgement claim on the ground that she had not identified specific funds. In doing so, the court improperly resolved fact-dependent tracing and possession questions without the benefit of discovery. Supreme Court precedent makes clear that the availability of equitable relief under ERISA § 502(a)(3) often turns on factual determinations that cannot be resolved at the pleading stage. Montanile v. Board of Trs. of the Nat'l Elevator Indus. Health Benefit Plan, 577 U.S. 136, 145-49 (2016).

Sixth Circuit precedent likewise does not compel dismissal. Although § 502(a)(3) cannot be used to seek duplicative or loss-based relief where adequate remedies are available under

other ERISA provisions, such as § 502(a)(1)(B), that limitation applies only after the court determines that the alternative provision fully remedies the injury and that the claim is not merely an impermissible attempt to repackage relief that would otherwise be unavailable. Rochow v. Life Ins. Co. of N. Am., 780 F.3d 364, 372-73 (6th Cir. 2015) (en banc).

Because Ms. Dashwood and the class of Plaintiffs allege systemic fiduciary breaches that § 502(a)(1)(B) cannot adequately remedy, relief under § 502(a)(3) remains available, and the District Court's dismissal at the pleading stage was erroneous. Accordingly, this Court should reverse the judgment of the United States District Court for the Eastern District of Tennessee and remand the case for further proceedings.

A. Section 502(a)(3) Remedies Are Available Because No Other ERISA Provision Redresses Defendants' Systemic Breaches of Fiduciary Duties.

ERISA § 502(a)(3) authorizes plan participants and beneficiaries to obtain "appropriate equitable relief" to redress violations of ERISA or other breaches of fiduciary duty when no other provision of the statute provides adequate relief. Varity Corp. v. Howe, 516 U.S. 489 (1996).

In Varity, a group of plan beneficiaries alleged that their employer, acting in its fiduciary capacity as a plan administrator, deliberately misled them into transferring to a financially unstable subsidiary, resulting in the loss of their benefits. Id. at 493-97. Because the plaintiffs were no longer participants in the original plan, they could not seek benefits under ERISA § 502(a)(1)(B), and § 502(a)(2) does not permit individualized relief. Id. at 515. The Court held that, for reasons like this, § 502(a)(3) functions as a "catchall" provision designed to ensure that fiduciary misconduct does not go unremedied simply because no other ERISA provision applies. Id. at 512-13.

The Sixth Circuit later clarified that relief under ERISA § 502(a)(3) is unavailable where a plaintiff seeks duplicative recovery for an injury that is fully remedied by another ERISA provision. Rochow v. Life Ins. Co. of N. Am., 780 F.3d 364, 372-73 (6th Cir. 2015) (en banc). In Rochow, the plaintiff asserted claims under both § 502(a)(1)(B) and § 502(a)(3) after the insurer wrongfully denied his long-term disability benefits. Id. at 367. The plaintiff recovered all benefits due under the plan through his § 502(a)(1)(B) claim and then sought disgorgement under § 502(a)(3) based on the same denial of benefits. Id. at 370-71. The Sixth Circuit held that the plaintiff's § 502(a)(3) claim for disgorgement was impermissible because the injury—the denial of his disability benefits—was fully remedied by § 502(a)(1)(B). Id. at 372-73. Critically, Rochow addressed the availability of additional relief only *after* the plaintiff had already obtained complete relief under the other provision. Id. The Sixth Circuit emphasized that § 502(a)(3) may not be used to obtain duplicative recovery or to repackage a benefits claim where an adequate remedy already exists. Id.

In this case, relief under § 502(a)(3) is appropriate because no other provision of ERISA fully remedies the harm suffered by Ms. Dashwood and the similarly situated plaintiff class. As in Varity, Appellants allege that the Willoughby Defendants engaged in disloyal conduct by administering prescription drug benefits in a manner designed to advance their own financial interests, rather than those of plan participants, in violation of their fiduciary duties under 29 U.S.C. § 1104. First Am. Compl. at 9. Appellant's claim does not concern the denial of a particular benefit; instead, it challenges Defendants' overall administration of prescription drug benefits for their own financial gain. Id. at 9. Specifically, Willoughby Health was motivated by cost savings associated with providing a cheaper drug, while Willoughby RX received payments in the form of manufacturer rebates. Id. As in Varity, no other ERISA provision supplies an

adequate remedy for this injury. Section 502(a)(1)(B) permits recovery only of benefits due under the terms of the plan and does not address fiduciary misconduct, such as undisclosed financial incentives or systemic disloyalty in plan administration. Because Ms. Dashwood's injury arises from the breach of fiduciary duties themselves, § 502(a)(3) functions as ERISA's "catchall" provision, providing relief where other sections of the statute fall short.

On the other hand, this case is fundamentally different from Rochow. Unlike the plaintiff in Rochow, Ms. Dashwood does not seek duplicative recovery for a denial of benefits that can be remedied by § 502(a)(1)(B), nor does she attempt to repackage a benefits claim as a claim for fiduciary-breach. Instead, Ms. Dashwood challenges systemic fiduciary misconduct that § 502(a)(1)(B) cannot remedy at all. Additionally, because § 502(a)(1)(B) provides only individualized benefit recovery, it cannot redress the class-wide fiduciary breaches that are being brought in the case at bar. Since the alleged injury is distinct from any single benefit determination, and remains unaddressed by other ERISA provisions, Rochow does not bar relief under § 502(a)(3). The Sixth Circuit has repeatedly recognized this distinction, permitting § 502(a)(3) claims to proceed where plaintiffs allege systemic fiduciary misconduct that § 502(a)(1)(B) cannot redress. See also Hill v. Blue Cross & Blue Shield of Michigan, 409 F.3d 710, 718-19 (6th Cir. 2005) (recognizing § 502(a)(3) remains available where plaintiffs allege plan-wide fiduciary misconduct not redressable through individual benefit claims).

Accordingly, consistent with Varity, and because no other ERISA provision adequately redresses the fiduciary breaches alleged here, § 502(a)(3) remains available to remedy misconduct that would otherwise escape judicial review. The district court therefore erred in preventing relief under § 502(a)(3) at the outset of the case, and this Court should reverse and remand for further proceedings.

B. The District Court Erred by Treating Ms. Dashwood's Requested Equitable Relief as Impermissible Legal Damages Solely Because It Took Monetary Form.

Under ERISA § 502(a)(3), the relevant inquiry is not whether relief takes monetary form, but whether the basis of recovery is equitable in nature—that is, whether the relief enforces fiduciary obligations and remedies fiduciary misconduct. CIGNA Corp. v. Amara, 563 U.S. 421, 439 (2011). In Amara, the Supreme Court held that "appropriate equitable relief" refers to remedies that were traditionally available in courts of equity, even when those remedies involved the payment of money. Id. at 424. Because ERISA analogizes fiduciaries to trustees and benefit plans to trusts, suits by beneficiaries against plan fiduciaries for breach of duty fall squarely within the traditional scope of what constitutes "equity." Id. at 439-40. Consistent with that historical framing, the Court explained that equity courts had the ability to award monetary relief to remedy a trustee's breach of duty or to prevent unjust enrichment. Id. at 441-42. One such remedy, commonly referred to as "surcharge," was "exclusively equitable" prior to the merger of law and equity and therefore qualifies as a form of equitable relief under § 502(a)(3). Id. at 442-43. The Court explained that the mere monetary form of the remedy does not automatically transform it into compensatory or legal damages where the defendant is a fiduciary and the relief enforces its obligations. Id.

Courts have likewise recognized that disgorgement, like surcharge, addresses unjust enrichment and is equitable in nature. Rose v. PSA Airlines, Inc., 80 F.4th 488, 496-500 (4th Cir. 2023). In Rose, the Fourth Circuit explained that monetary relief may be equitable where a plaintiff seeks to recover funds that, in good conscience, belong to the plaintiff but are wrongfully retained by the defendant. Id. at 490. The court rejected the idea that money neatly divides law from equity, noting that courts of equity historically awarded monetary remedies such as restitution, disgorgement, and equitable compensation to remedy unjust enrichment and

fiduciary breaches. Id. at 498-500. As the court explained, while plaintiffs may not seek personal liability imposed at large, "plaintiffs that seek to strip away defendant's unjust gains might have better luck." Id. at 504. See also Peters v. Aetna, Inc., 2 F.4th 199 (4th Cir. 2021) (recognizing surcharge as an equitable remedy available under either an unjust-enrichment or loss-based theory).

At the same time, the Sixth Circuit has recognized limits on monetary relief under § 502(a)(3) where the requested relief functions as compensatory damages rather than equitable enforcement of fiduciary duties. Aldridge v. Regions Bank, 144 F.4th 828, 833-835 (6th Cir. 2023). In Aldridge, plan participants alleged that fiduciaries mismanaged plan assets, causing them financial losses. The Sixth Circuit ultimately held that the plaintiffs' requested relief, measured solely by their losses, functioned as legal damages rather than equitable surcharge. Id. at 840-43. Importantly, however, Aldridge did not hold that monetary relief is *categorically* unavailable under § 502(a)(3), nor did it authorize dismissal at the pleading stage whenever monetary remedies are alleged.

Finally, in determining whether relief was traditionally available in equity, the Supreme Court has instructed courts to examine the nature of the remedy sought, rather than whether the relief involves money. Sereboff v. Mid Atl. Med. Servs., Inc., 547 U.S. 356, 363-64 (2006). In Sereboff, a plan fiduciary sought reimbursement from specifically identifiable settlement funds obtained by the beneficiaries. Id. at 360–61. The Court held that the relief was equitable because it sought to enforce an equitable lien against particular funds–a form of relief that was traditionally available in equity. Id. at 363. The Court further reaffirmed that relief does not become legal merely because it requires the payment of money. Id. at 363.

The district court erred by categorically characterizing the relief sought as impermissible legal damages. Ms. Dashwood's claims are equitable in both form and substance. Her claims align squarely with Amara. Like the plaintiffs there, she alleged that Defendants, acting as ERISA fiduciaries, administered prescription drug benefits in their own financial interests, thereby breaching their duties of loyalty and prudence. First Am. Compl. at 9-10. And, as in Amara, the relief sought is directed at enforcing fiduciary obligations and remedying fiduciary misconduct–not awarding compensatory damages. Id. at 10. Because Defendants acted in a fiduciary capacity, analogous to trustees, monetary relief designed to remedy breaches of loyalty or unjust enrichment constitutes equitable relief under § 502(a)(3). Critically, Amara rejected the notion that the monetary form of surcharge transforms it into compensatory or legal damages where, as here, the defendant is a fiduciary and the relief enforces its obligations. Id.

Ms. Dashwood likewise alleges that Defendants were unjustly enriched and therefore seeks equitable relief under this theory. First Am. Compl. at 9. She seeks surcharge to remedy harm caused by the fiduciary breach, and disgorgement to strip Defendants of rebates and cost savings obtained through conflicted formulary decisions. Id. at 9; Mem. Op. & Order at 13-14. By switching out the prescribed medication, Defendants obtained lower costs and were awarded rebates. First Am. Compl. at 9. As Rose makes clear, monetary relief aimed at recovering funds that are wrongfully retained through unjust enrichment traditionally constitute equitable relief, and dismissal is improper where plaintiffs plausibly allege such enrichment at the pleading stage. Furthermore, while Rose explained that seeking personal liability in the form of a sum of money is impermissible, "plaintiffs that seek to strip away defendant's unjust gains might have better luck." Rose, 80 F.4th at 504. This is exactly what Ms. Dashwood, and the similarly situated class of plaintiffs, attempt to recover from the Willoughby Defendants.

On the other hand, this case is distinguishable from Aldridge. Unlike the plaintiffs there, Ms. Dashwood does not seek relief measured solely by plan losses as a substitute for compensatory damages, nor does she ask the Court to award a specific monetary amount at this stage. Instead, she seeks equitable relief, in the form of a surcharge for Defendants' fiduciary misconduct as well as disgorgement for the recovery of Defendants' ill-gotten gains—the precise availability of which depends on facts that have not yet been developed. Mem. Op. & Order at 13-14. Aldridge therefore does not justify dismissal of Ms. Dashwood's § 502(a)(3) claim at the pleading stage.

Lastly, consistent with Sereboff, the presence of money does not render relief legal rather than equitable. Courts must examine the nature of the remedy sought, not merely whether it involves money. Ms. Dashwood seeks relief that enforces fiduciary obligations and addresses unjust enrichment resulting from fiduciary misconduct. Whether particular funds are ultimately traceable or identifiable is not a basis for characterizing her requested relief as legal damages but is rather a fact-dependent inquiry to be resolved through later stages of litigation. As such, the United States District Court for the Eastern District of Tennessee erred in classifying the relief Ms. Dashwood seeks as impermissible legal damages, and this Court should reverse and remand.

C. The District Court Improperly Resolved Ms. Dashwood's Claim For Disgorgement, A Fact-Dependent Tracing Question, at the Pleading Stage.

Relief may be equitable where a plaintiff seeks to recover "particular funds or property in the defendant's possession," rather than imposing personal liability payable from the defendant's general assets. Great-West Life & Annuity Ins. Co. v. Knudson, 534 U.S. 204, 213-14 (2002). See also Peters v. Aetna, 2. F4th 199 (4th Cir. 2021) (holding disgorgement as equitable remedy meant to prevent the wrongdoer from enriching himself by his wrongs). Thus, equitable relief

ultimately requires identification of specific property "belonging in good conscience to the plaintiff" that can be traced to particular funds or property held by the defendant. Id. at 213.

Whether those tracing requirements are satisfied is a fact-dependent inquiry that cannot be resolved at the pleading stage. In Montanile v. Board of Trs. of the Nat'l Elevator Indus. Health Benefit Plan, the Supreme Court held that equitable relief under § 502(a)(3) may be unavailable where specifically identifiable funds have been dissipated, such that recovery would come from a defendant's general assets. 577 U.S. 136, 145-48 (2016). Critically, however, the Court emphasized that whether equitable relief remains available turns on what actually happened to the funds–specifically, whether they remain in the defendant's possession or have been dissipated. Id. at 148-49. Because that question had not been resolved on the record, the Court remanded to the lower court for further factual development and expressly rejected the idea that courts may deny equitable relief based on mere *assumptions* about tracing or dissipation. Id. at 149. Montanile thus confirms that tracing and dissipation are factual determinations that cannot be resolved without a developed record.

This case presents the precise procedural error Montanile cautioned against. Nothing in Great-West authorizes dismissal of a fiduciary-breach claim at the pleading stage based on unresolved tracing questions. Great-West describes the requirements for equitable restitution–it does not permit courts to demand detailed tracing allegations at the pleading stage, before discovery. In her § 502(a)(3) claim for breach of fiduciary duty, Ms. Dashwood plausibly alleges that Defendants were unjustly enriched through their fiduciary self-interest, retained financial benefits, and cost savings resulting from conflicted administration of prescription drug benefits. First Am. Compl. at 9. She seeks equitable relief–such as disgorgement, surcharge, and

injunctive relief–directed at enforcing fiduciary obligations rather than imposing compensatory damages. Id. at 10.

Furthermore, like the plaintiff in Montanile, Ms. Dashwood seeks equitable relief that depends on whether Defendants continue to possess traceable proceeds of fiduciary misconduct. And as in Montanile, that determination turns on factual questions concerning possession, tracing, and dissipation. While the Supreme Court in Montanile remanded the case, finding that further factual development was crucial, the district court here nevertheless dismissed Ms. Dashwood's claim based on the absence of detailed allegations regarding where the funds are held and whether they remain in Defendants' possession. That was error. Montanile makes clear that courts may not assume dissipation or lack of traceability at the outset of litigation. At most, tracing limitations affect the form of equitable relief ultimately available–not whether a plaintiff may pursue a fiduciary-breach claim under § 502(a)(3) at all.

Therefore, whether particular equitable remedies are ultimately available must be determined after factual development, not on a Rule 12(b)(6) record. Class-wide discovery is necessary to determine the scope of Defendants' rebates, retained savings, and fiduciary profits across the class period. Accordingly, the judgment dismissing Ms. Dashwood's § 502(a)(3) fiduciary-breach claim should be reversed and remanded for further proceedings.

CONCLUSION

For the foregoing reasons, this Court should reverse the judgment of the United States District Court for the Eastern District Court of Tennessee and remand the case for further proceedings.

Respectfully submitted,
/s/ Team Nine
Team Nine

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