No. 15-319

IN THE
Supreme Court of the United States

UNITEDHEALTH GROUP INCORPORATED, *et al.*,
Petitioners,

v.

JONATHAN DENBO, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

United serves as a fiduciary claims administrator for health insurance plans governed by the Employee Retirement Income Security Act of 1974 (ERISA). These include both fully-insured plans and self-funded plans. United controls the benefits process and makes all benefit payments. As to self-funded plans, United pays benefits from plan assets. Contrary to Petitioner's contention, this case presents no conflict among the courts of appeals to resolve.

Respondents allege that United's policies and procedures for deciding benefits claims violate the anti-discrimination mandate incorporated into ERISA by the Mental Health Parity and Addiction Equity Act of 2008. Respondents principally seek injunctive relief and allege that United is individually liable for breaching its fiduciary duties. United may also be responsible for paying past benefits. The Second Circuit held that Respondents' allegations survive a motion to dismiss. The Court also determined that Respondents may be entitled to the equitable remedy of surcharge. The questions presented are:

1. Whether § 1132(a)(1)(B) authorizes a suit against a fiduciary claims administrator of a self-funded ERISA plan, where the fiduciary controls benefits determinations and is responsible for paying benefits out of plan assets, and when a court may specify in its judgment that the claims administrator shall pay benefits claims from plan assets?

2. Whether a plaintiff who has stated claims for equitable relief under § 1132(a)(3) may simultaneously plead alternative relief under § 1132(a)(1)(B)?

CORPORATE DISCLOSURE STATEMENT

In accordance with Supreme Court Rule 29.6, Respondent New York State Psychiatric Association, Inc. states that it has no parent corporation and that no publicly-held corporation owns any of its stock.

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INTRODUCTION

Respondents' complaint in this case implicates United's role as a fiduciary claims administrator for both fully-insured plans and self-funded plans.[1] As a fiduciary for these plans, United exercises full control of benefits determinations. To decide benefits claims, United writes its own coverage determination guidelines, which establish its claims-handling policies and procedures. Respondents allege that United's internally-developed claims-handling policies and procedures violate ERISA's substantive provisions. In the District Court, United argued that it could not be sued under either § 1132(a)(1)(B) or § 1132(a)(3). Despite recognizing that Respondents had stated a claim that United violates the antidiscrimination mandate of the Mental Health Parity and Addiction Equity Act of 2008, the District Court agreed. The effect of the District Court's ruling was nothing short of complete ERISA *immunity* for United as to conduct for which United alone is responsible.

The Court of Appeals had little trouble reversing. The Court recognized that there are no textual limitations on possible defendants under these core

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[1] UnitedHealth Group is the corporate parent of UHC Insurance Company, United–NY, and UBH; each of which are subsidiaries that administer claims for particular health insurance plans. C.A. J.A. 43–44, ¶¶ 34–37. To keep things simple, Respondents refer to Petitioners collectively as either "United" or "Petitioner."

ERISA enforcement provisions, and that, in any event, United was *the* logical defendant as to both.

To resist this outcome, United now focuses on the self-funded nature of a single ERISA plan at issue in this case in which one of the Respondents participates. What United seeks in this Court is more modest than the relief it sought in the District Court—but only slightly. United seeks from this Court total immunity from ERISA as to its administration of self-funded plans. But United's belief about why self-funded plans should be treated differently than fully-insured plans finds no support in the text of ERISA, caselaw, or common sense. It is United's job as claims administrator for Respondent Denbo's ERISA plan to decide benefits claims and to pay claims directly out of plan assets—assets that it controls. To illustrate, if a court sides with a plaintiff in a § 1132(a)(1)(B) action for individual benefits involving a self-funded plan, a court can direct United to pay benefits out of plan assets. After all, that's what United does in the ordinary course (probably on a daily basis).

In the face of all this, United insists it should be immune. It contends that because it is not the funding source, it cannot be sued. Pet. 22–23. But *no* court of appeals has adopted this position. The split in authority United trumpets on this point is illusory. No circuit focuses on the funding source. And no court of appeals has adopted any sort of special rule for claims administrators of self-funded plans. Rather, each circuit focuses on control. And in each circuit, United's total control over the benefits process

is sufficient to render it a proper—indeed logical—defendant to an action under § 1132(a)(1)(B).

Likewise, no court of appeals has held that a plaintiff who has stated a claim to equitable relief under § 1132(a)(3)—as Respondents have here—has dismissed such a claim at the pleadings stage because some legal relief may possibly be available under § 1132(a)(1)(B). That "split," too, is illusory.

Because there are no divisions among the courts of appeals for this Court to review or resolve, United's petition should be denied.

STATEMENT

I. STATUTORY FRAMEWORK

A. The Parity Act

Congress enacted the current version of the Mental Health Parity and Addiction Equity Act in 2008 (2008 Parity Act). This Act prevents administrators of employer health insurance plans from discriminating against patients in need of mental health services. H.R. REP. NO. 110-374, pt. 3, at 12 (2008). The 2008 Parity Act's stated purpose is "to have fairness and equity in the coverage of mental health and substance-related disorders vis-à-vis coverage for medical and surgical disorders." *Id*.

Congress first attempted to curb this form of discrimination by enacting the Mental Health Parity Act of 1996. The 1996 Parity Act prohibited health insurance plans from imposing annual and lifetime limits on mental health benefits which exceeded those applicable to medical and surgical benefits. In response, many health insurers began imposing other discriminatory restrictions on mental health bene-

fits. U.S. GOV'T ACCOUNTABILITY OFF., GAO/HEHS-00-95, MENTAL HEALTH PARITY ACT: DESPITE NEW FEDERAL STANDARDS, MENTAL HEALTH BENEFITS REMAIN LIMITED 12 (2000). *See also* U.S. Dep't of Health & Human Servs., Mental Health: A Report of the Surgeon General (1999); S. REP. NO. 110-53, at 4 (2007); H.R. REP. NO. 110-374, pt. 3, at 13 (2008). As a result, Congress saw that it had to go back to the drawing board, which it did.

Congress viewed achieving "parity in mental health coverage" as "an urgent matter because of the fact that mental disorders are a leading cause of disability." S. REP. NO. 110-53, at 2 (2007). Although Congress recognized that improving access to mental health services through private insurance would impose economic costs, "[i]nvesting in mental health parity is beneficial for the Nation because the costs associated with lost worker productivity and the costs of providing extra physical health services outweigh the costs of implementing parity for mental health treatment." *Id.*

Among other things, the 2008 Parity Act prohibits: (1) treatment limitations applicable to mental health benefits that are more restrictive than "the predominant treatment limitations applied to substantially all medical and surgical benefits" and (2) "separate treatment limitations" that apply only to mental health benefits. 29 U.S.C. § 1185a(a)(3)(A)(ii).

The 2008 Parity Act regulations target and prohibit specific discriminatory practices. These include "nonquantitative treatment limitations" on mental health services such as "[m]edical management

standards limiting or excluding benefits based on medical necessity or medical appropriateness" and "[r]efusal to pay for higher-cost therapies until it can be shown that a lower-cost therapy is not effective (also known as fail-first policies or step therapy protocols)." 29 C.F.R. § 2590.712(c)(4)(ii). The regulations further specify that the "processes, strategies, evidentiary standards, or other factors used in applying" non-quantitative treatment limitations are subject to the statute's parity requirements. 29 C.F.R. § 2590.712(c)(4)(i). These factors are not typically included in plan terms. Rather, they are developed by claims administrators to determine whether a given treatment is covered.

B. ERISA

Congress provided for the private civil enforcement of the 2008 Parity Act through § 1132(a) of ERISA. Section 1132(a)(1) "empower[s] . . . a participant or beneficiary" to bring a civil action "to recover benefits due to him under the terms of his plan, to enforce his rights [to benefits] under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan." Section 1132(a)(3) "empower[s] . . . a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan."

Section 1132(a) "demonstrates Congress' care in delineating the universe of *plaintiffs* who may bring certain civil actions." *Harris Trust & Sav. Bank* v. *Salomon Smith Barney Inc.*, 530 U.S. 238, 247

(2000). Section 1132(a) contains no limitations, however, on the universe of possible *defendants*. *See id.* In light of the statutory language, this Court explained in *Harris Trust* that there are no limitations on who may be a proper defendant in a lawsuit under § 1132(a)(3). *Id.*

1. Before *Harris Trust*, and for some years afterward, many courts of appeals had read just such a limitation into § 1132(a)(1)(B). Several courts of appeals maintained that "ERISA permits suits to recover benefits only against the Plan as an entity." *Gelardi* v. *Pertec Comput. Corp.*, 761 F.2d 1323, 1324 (9th Cir. 1985). Some courts added to the list of "proper" § 1132(a)(1)(B) defendants, "the administrators and trustees of the plan." *Chapman* v. *ChoiceCare Long Island Term Disability Plan*, 288 F.3d 506, 509 (2d Cir. 2002). *See also Leister* v. *Dovetail, Inc.*, 546 F.3d 875, 879 (7th Cir. 2008) (addressing these "proper defendant" rules).

Gradually, however, the courts of appeals recognized that these limitations lacked textual support, made little sense, and conflicted with this Court's statutory analysis of § 1132(a). The Ninth Circuit, for instance, overruled its *Gelardi* line of cases in *Cyr* v. *Reliance Standard Life Insurance Co.*, 642 F.3d 1202 (9th Cir. 2011) (en banc). Dispensing with its own "proper defendant" rule, the Court explained that it saw "no reason to read a limitation into § 1132(a)(1)(B) that the Supreme Court did not perceive in § 1132(a)(3)." *Cyr*, 642 F.3d at 1206.

Other courts of appeals have followed the Ninth Circuit's path. These courts include the Seventh Circuit in *Larson* v. *United Healthcare Insurance Co.*,

723 F.3d 905, 916 (7th Cir. 2013); the Fifth Circuit in *Lifecare Management Services LLC* v. *Insurance Management Administrators Inc.,* 703 F.3d 835, 843–45 (5th Cir. 2013); and the Second Circuit in the decision below, Pet. App. 12a ("Our holding is in accord with six of our sister circuits, which have held that claims administrators may be sued as defendants under § 502(a)(1)(B).").[2]

2. Section 1132(a)(3)(A) authorizes an injunction against "any act or practice" which violates "any provision" of ERISA. This includes the 2008 Parity Act's anti-discrimination mandate in 29 U.S.C. § 1185a. Section 1132(a)(1)(B) authorizes "other appropriate equitable relief" to redress ERISA violations. This equitable relief includes the equitable remedies of surcharge, estoppel, and reformation. *CIGNA Corp.* v. *Amara*, 131 S. Ct. 1866, 1879–80 (2011).

Like § 1132(a)(1)(B), liability under § 1132(a)(3) is not limited to certain kinds of defendants. Nor does liability "depend on whether ERISA's substantive provisions impose a specific duty on the party being sued." *Harris Trust*, 530 U.S. at 245. Rather, liability is determined by whether the defendant engaged in an act or practice that violates a substantive provision of ERISA. *Id*.

II. PROCEEDINGS BELOW

A. Background

United serves as a claims administrator for a multitude of ERISA plans. With respect to the CBS

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[2] Because parties and courts often use § 502 and § 1132 interchangeably, Respondents do as well.

Plan in which Respondent Denbo participates, United administers all medical and behavioral health benefits. C.A. J.A. 181. CBS Sports Network, the plan sponsor, makes plan assets available to United to pay claims. *Id.* at 179. In turn, United is responsible for paying all medical and mental health benefits. *Id.* at 181. Respondents allege that, when United seeks to recover previous benefits paid to providers, it treats itself as the source of funds by withholding payments owed to a provider for treating a patient covered by one plan to "offset" alleged overpayments with respect to other patients insured by other plans. C.A. J.A. 118–20, ¶¶ 256–61.

United uses its own guidelines, policies, and procedures to decide benefits claims, and enjoys "exclusive authority and sole and absolute discretion to interpret and to apply the rules of the Plan to determine claims for Plan benefits." C.A. J.A. 181. In that respect, United "is the fiduciary under ERISA for purposes of deciding claims for Plan benefits." *Id.* United's "determinations are final and binding on all parties." *Id.* The CBS Medical Plan contains information about how participants (such as Respondent Denbo) may file suit against United. Pet. App. 6a.

On April 26, 2013, Respondent Denbo did just that. C.A. J.A. 25–169. Respondent, and others, allege that United discriminated against their mental health insurance benefit claims in violation of the 2008 Parity Act by systematically imposing more restrictive limitations on those claims than it does on non-mental health claims. Pet. App. 6a–7a. These alleged restrictions, which United developed itself, include: (a) applying special, more restrictive guide-

lines for determining whether mental health services are medically necessary than United applies to medical services; (b) imposing higher evidentiary burdens on mental health claims; (c) imposing more stringent utilization review practices; (d) refusing to pay for treatment pending reviews, which United routinely delays; and (e) applying less favorable reimbursement standards for mental health treatment than for equivalent medical services. C.A. J.A. 31–32, ¶ 5. Respondents allege that United applies these policies across-the-board in its role as a claims administrator for health insurance plans that have delegated to United the responsibility for making mental health benefit determinations.

Respondents seek relief under § 1132(a)(1)(B) and § 1132(a)(3). Respondents seek an order enjoining United from applying internal policies and procedures that violate the anti-discrimination mandate of the 2008 Parity Act. They also seek an injunction that will direct United to reprocess claims in compliance with ERISA. Further, Respondents seek to compel United to pay benefits which were denied improperly. (As to self-funded plans, United may be ordered to pay benefits out of plan assets.)

Respondents describe in their complaint the grievances that Respondent NYSPA has received from its members and conveyed to United concerning: across-the-board requirements for concurrent reviews imposing prospective limitations on treatment, C.A. J.A. 102, ¶ 210; deviation from national standards of care, C.A. J.A. 102–103, ¶ 212; curtailment of psychotherapy, C.A. J.A. 103, ¶ 213; and denials of intermediate care, C.A. J.A. 103, ¶ 214.

NYSPA's claims involve United's administration of fully-insured plans and self-funded plans.

In addition to seeking relief for NYSPA on behalf of its members and their patients, Respondents seek certification of Mr. Denbo as a representative of an appropriate class of plaintiffs.

B. The District Court's Decision

On June 10, 2013, United filed a motion to dismiss the complaint. The District Court viewed Respondents' complaint as "essentially a denial of benefits case" under § 1132(a)(1)(B). Pet. App. 21a. The District Court concluded that a claims administrator could never be sued under § 1132(a)(1)(B). The court found that while Respondents had pleaded valid Parity Act violations against United, it concluded that "Plaintiffs are suing the wrong party." Pet. App. 33a. The District Court imposed what it perceived to be a "bright-line rule that only entities that have been designated formally as 'plan administrators' under 29 U.S.C. § 1002(16)(A) are proper 'administrator' defendants in § 1132(a)(1)(B) actions." Pet. App. 35a.[3]

The District Court also concluded that United was not a proper defendant in an action to enforce the 2008 Parity Act. The District Court acknowledged United's fiduciary obligations and it agreed that an action under § 1132(a)(3) could be based on

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[3] This "bright-line rule" imposed by the District Court had nothing to do with whether the plans at issue were self-funded or fully insured. Nor did the District Court suggest that a plan administrator is a funding source. *See id.* United does not contend that plan administrators are funding sources. Pet. 5, 23.

United's alleged violations of the 2008 Parity Act. But the court read this Court's decision in *Varity Corp.* v. *Howe*, 516 U.S. 489 (1996), to hold that relief under § 1132(a)(3) was unavailable against United. The court reasoned that Respondents could obtain adequate relief by suing *other parties* for the recovery of plan benefits under § 1132(a)(1)(B), and so they could not obtain any form of injunction or other equitable relief against United under § 1132(a)(3).

The District Court also rejected NYSPA's claims based on its conclusion that NYSPA lacked associational standing.

C. The Court of Appeals' Decision

The Second Circuit reversed. Citing the Ninth Circuit's decision in *Cyr*, and this Court's decision in *Harris Trust*, the Second Circuit rejected United's argument that it cannot be sued under § 1132(a)(1)(B). Pet. App. 11a–12a. In its analysis, the Second Circuit did not mention any potential distinction between claims administrators of self-funded plans and claims administrators of fully-insured plans. Rather, the Court explained that United's control over benefits claims meant that it was an appropriate defendant to a § 1132(a)(1)(B) action. Pet. App. 12a.

The Second Circuit also reversed the District Court's dismissal of Respondents' claims for equitable relief under § 1132(a)(3). The Court first observed that there was "no serious dispute" that Respondent Denbo had stated valid claims for relief under § 1132(a)(3). Pet. App. 10a. In that regard, the Court determined that it was not clear whether legal relief under § 1132(a)(1)(B) would provide an adequate and

sufficient remedy. Pet. App. 16a. Accordingly, applying this Court's decision in *Varity*, the Court of Appeals held that the District Court's dismissal had been premature. Pet. App. 15a.

The Court also reversed the District Court's holding that NYSPA could not establish associational standing. The Court remanded with directions to the District Court to consider NYSPA's claims. Pet. App. 9a–10a.

ARGUMENT FOR DENYING THE PETITION

Petitioner contends that the decision below deepens two circuit splits. Both splits are illusory.

First, there is no circuit split on the question whether a claims administrator who exercises control over the benefits claims process may be sued under § 1132(a)(1)(B). United claims that even if it exercises control over a self-funded plan, and has been delegated the responsibility to pay benefits *out of the plan's assets*, it cannot be sued under § 1132(a)(1)(B). It represents that the law in four circuits is that under § 1132(a)(1)(B), "only parties responsible for paying benefits may be sued." Pet. 10. Yet this Court will search in vain for any decision by any Court of Appeals that adopts United's position. None has.

The Seventh Circuit has mentioned in *dicta* that a party should be an "obligor" to be held liable for benefits. But the Seventh Circuit has never held that a claims administrator of a self-funded plan is not such an obligor. To the contrary, a claims administrator like United who decides claims and pays claims directly out of plan assets, *is* an "obligor." For the same reasons that Petitioner acknowledges that a plan administrator is a proper § 1132(a)(1)(B) de-

fendant, Pet. 5, 23, a claims administrator who controls plan assets is a proper § 1132(a)(1)(B) defendant. Just as a trustee or plan administrator does not pay benefits out of her own pocket, a claims administrator of a self-funded plan does not pay claims out of its own pocket. But *both* may be directed by the terms of a judgment to exercise their delegated responsibility to pay a claim for benefits from plan assets. *See* Pet. 23. After all, as a claims administrator of a self-funded plan, paying benefits out of plan assets is United's job. C.A. J.A. 181. And if a plan administrator or a claims administrator violates fiduciary duties, either may be held individually liable. 29 U.S.C. § 1132(d).

Second, the courts of appeals do not diverge on the question whether a plaintiff who seeks equitable relief available exclusively under § 1132(a)(3) may also seek legal relief under § 1132(a)(1)(B). The Second Circuit held below that unless it is unmistakably clear at the outset that a plaintiff has no entitlement to equitable relief, it is premature to dismiss a claim under § 1132(a)(3) at the pleadings stage (that is, before discovery). No circuit court has held otherwise. Indeed, in many of the cases that United declares are inconsistent with the decision below, the court decided the question at the summary judgment stage or on a motion following discovery. In the rare cases decided at the pleadings stage, it was clear at the outset that the plaintiff was not entitled to equitable relief. Each of those decisions is consistent with the decision below.

This Court should deny the petition.

I. There Is No Circuit Conflict On Whether a Claims Administrator of a Self-Funded Plan is a Proper Defendant Under § 1132(a)(1)(B)

United contends that the decision below "takes sides in an already entrenched split over who may be sued in an action to recover benefits under ERISA § 502(a)(1)(B)." Pet. 10. First, even if that split existed (and it does not), this would not be the right vehicle to review it. This is a not a run-of-the-mill claim for unpaid individual benefits. Respondents principally seek broad injunctive relief to prevent statutory violations by United—not by the plans. United's discriminatory conduct violates the 2008 Parity Act, which is a violation of the substantive provisions of ERISA. A suit against the plan or plan administrator—to redress United's internal discriminatory guidelines—makes no sense. Suing these parties could not lead to sufficient remedies for Respondents.

Second, nothing about the Second Circuit's decision suggests that the Court was "taking sides" at all. To the contrary, the Court of Appeals acknowledged that it was joining "six of [its] sister circuits" on the question of who may be sued under § 1132(a)(1)(B). Pet. App. 12a. The Court did not identify any inconsistent decisions. The Court also recognized that its decision is faithful to this Court's textual analysis of § 1132(a) in *Harris Trust*. *Id.*

Third, the decision below is correct. Indeed, the Court of Appeals' conclusion that the party responsible for deciding and paying benefits is a proper defendant to a suit for benefits is the *only* sensible outcome.

A. Respondents Seek More Than Benefits

Respondents seek injunctive relief to bring an end to United's discriminatory policies and procedures. At this stage, it is less than clear whether such an injunction may be issued under § 1132(a)(1)(B). In fact, it is more likely that this form of system-wide injunction must be granted under § 1132(a)(3)(A). *See Hill* v. *Blue Cross & Blue Shield of Mich.*, 409 F.3d 710, 718 (6th Cir. 2005) (holding that "plan-wide injunctive relief" should be sought under § 1132(a)(3)(A), not § 1132(a)(1)(B)). In any event, assuming this form of injunctive relief is available under § 1132(a)(1)(B), United is the proper defendant. Respondents do not read United's petition to say otherwise. Nor does United contend that it would not be a proper defendant for a participant to clarify future rights to benefits, § 1132(a)(1)(B), or that it cannot be held individually liable for breaching its fiduciary duties under § 1132(a)(1)(B), *Varity*, 516 U.S. at 512 (describing breach of fiduciary duty claims under § 1132(a)(1)(B)).

Accordingly, United's petition addresses only one aspect of the relief Respondents seek under § 1132(a)(1)(B). As to that single aspect, United is wrong that the decision below is in tension with any other circuit. And to the extent United's petition is based on the fear that a court somewhere will direct a claims administrator of a self-funded plan to pay a benefits claim out of its own assets, this Court should wait until a court actually does so to consider whether that relief is permissible under § 1132(a)(1)(B).

B. All Courts of Appeals Focus on Control

United claims that the decision below conflicts with decisions from three of the six circuits cited by the Second Circuit as consistent with its decision (the Third, Seventh, and Eighth). Pet. 10–11. It also claims that the decision below conflicts with a decision by the Tenth Circuit. *Id.*

The reality is that *none* of these four courts of appeals has adopted United's position. Rather, each of these courts of appeals—just as the Second Circuit recognized—focuses on the level of control a claims administrator exercises over benefit payments. After all, if an administrator decides claims, and normally pays claims out of plan assets, it is the logical defendant to answer for a denial of benefits. And it is the logical party for a court to direct to pay a benefits claim if it determines that *United's* decision was wrong.

Indeed, United never explains what would be improper about a court ordering a claims administrator to do what it normally does—pay benefits out of plan assets. Nor, for that matter, does it explain why there should be any limit on the universe of possible defendants under § 1132(a)(1)(B) when the carefully-drawn statute sets none.

1. *The Third Circuit*

It is well established in the Third Circuit that a plaintiff may bring a claim under § 1132(a)(1)(B) against a plan fiduciary if that fiduciary "maintained ***any authority or control*** over the management of the plan's assets, management of the plan in general, or maintained ***any responsibility over the admin-***

istration of the plan." *Curcio* v. *John Hancock Mut. Life Ins. Co.*, 33 F.3d 226, 233 (3d Cir. 1994) (emphasis added). "District courts [within the Third Circuit] have interpreted *Curcio* to mean that a '[p]laintiff may bring a 502(a)(1)(B) claim against a third-party plan administrator of a self-funded plan, but only if the third-party administrator is a fiduciary.'" *Wayne Surgical Ctr., LLC* v. *Concentra Preferred Sys., Inc.*, 2007 WL 2416428, at *6 n.3 (D.N.J., Aug. 20, 2007). United fits the bill. It is a fiduciary which administers all aspects of the plan.

United pays no heed to *Curcio*. Instead, it points to a different decision in the Third Circuit: *Graden* v. *Conexant Systems Inc.*, 496 F.3d 291 (3d Cir. 2007). But *Graden* had nothing to do with self-funded plans or claims administrators. Simply put, the question as to which United contends has led to a deep divide among ten courts of appeals was not even presented in *Graden*.

The plaintiff in *Graden* sued the plan administrators of his former employer's 401(k) plan. He did so under § 1132(a)(2)—not § 1132(a)(1)(B). The plaintiff alleged that the plan administrators had breached their fiduciary duties by causing him to invest his retirement savings in the company's own stock without telling him that a risky merger was in the offing. The defendants argued that the plaintiff (a former employee) was not a "participant." In the course of that argument, the defendants suggested that the plaintiff could not have brought a claim under § 1132(a)(1)(B). The Third Circuit explained that, in fact, the plaintiff *could have* brought a claim under § 1132(a)(1)(B). While the Court observed (in self-

identified *dicta*) that under § 1132(a)(1)(B), the usual defendant is the plan or the plan administrator,[4] it did not hold that third-party administrators that control plan assets are not also proper defendants.

Later decisions in the Third Circuit clarify that fiduciaries with control over plan assets may be sued under § 1132(a)(1)(B)—both for plan assets as well as in their individual capacity. In *Hahnemann University Hospital* v. *All Shore, Inc.*, 514 F.3d 300 (3d Cir. 2008), the Third Circuit held that a plan administrator could be held liable to pay plan benefits out of plan assets *and* could also be held liable in its individual capacity for breaching fiduciary duties. The Court explained that "[w]hen a denial of 'benefits due' arises from a plan administrator's breach of its fiduciary obligations to the claimant, Sections 1132(a)(1)(B) and (d) permit the beneficiary to seek redress for the breach directly from the plan administrator as a fiduciary." *Id.* at 309.

The Court also explained that if the plan administrator controls the plan's assets and benefits determinations, it may be sued for those assets. When a plaintiff establishes a claim to benefits against a plan administrator, "the court can direct the plan administrator to pay them from the assets of the plan, ***much as a trustee may be compelled to sat-***

[4] The Court's discussion of § 1132(a)(1)(B) was part of Section III, in which it responded to scattershot arguments made by the defendants. But the Court opened that section by making clear that its reasoning in Part II had been "sufficient to resolve this case." *Graden*, 496 F.3d at 298.

isfy a trust obligation from trust assets." *Id.* at 308 (emphasis added).

As shown by *Curcio* and *Hahnemann Hospital*, the law in the Third Circuit is clear. A plan fiduciary like United may be sued under § 1132(a)(1)(B)—both individually and for plan assets.

2. *The Seventh Circuit*

To create the impression of a circuit split where none exists, United relies principally on the Seventh Circuit's decision in *Larson* v. *United Healthcare Insurance Co.*, 723 F.3d 905 (7th Cir. 2013). Indeed, United's petition is an attempt to create the illusion of widespread disagreement by distorting *dicta* in *Larson*. The Seventh Circuit held in *Larson*, however, that United, as the claims administrator of a fully-insured plan, *could in fact* be sued under § 1132(a)(1)(B). The Seventh Circuit did not mention self-funded plans at all in its opinion. Nor did it discuss whether claims administrators of such plans may be § 1132(a)(1)(B) defendants.

To the contrary, the Seventh Circuit recognized that § 1132(a)(1)(B) contains *no* limitations on who is a proper defendant. *Larson*, 723 F.3d at 916. In that respect, the Court also recognized that its decision in *Larson* "accords with that of the en banc Ninth Circuit [in *Cyr*]," and the Fifth Circuit's decision in *LifeCare Management Services LLC* v. *Insurance Management Administrators Inc.,* 703 F.3d 835 (5th Cir. 2013). *Id.* Despite this recognition by the Seventh Circuit, United insists that the Seventh Circuit's decision in *Larson* conflicts with both the decision below and the Fifth Circuit's decision in *LifeCare Management*. Pet. 14–15.

To conjure up the appearance of conflict, United distorts the Seventh Circuit's *dictum* that the "obligor" of plan benefits often is the proper defendant for a § 1132(a)(1)(B) claim. Brief context clears away the confusion. In *Larson*, the Court explained that its holding—that § 1132(a)(1)(B) does *not* limit the universe of possible defendants—was consistent with its earlier decision in *Feinberg* v. *RM Acquisition, LLC*, 629 F.3d 671 (7th Cir. 2011). *Larson*, 723 F.3d at 913.

Feinberg—like *Larson*—also had nothing to do with self-funded plans. Rather, it involved an acquisition agreement. In *Feinberg*, the Seventh Circuit affirmed the dismissal of an ERISA claim against the successor of the original plan sponsor "not because it was brought against the 'wrong defendant,'" but because "the successor had no obligation to pay the benefits." *Larson*, 723 F.3d at 915 (internal citations omitted).

Accordingly, *Larson* is consistent with the notion that like a trustee at common law who controls trust assets, a claims administrator of a self-funded plan who controls claims administration and payment is an obligor. *See Hahnemann Univ. Hosp.*, 514 F.3d at 308. If the plaintiff prevails on a benefits claim, the court may direct the administrator to pay the judgment out of plan assets. Likewise, if the plaintiff proves that the administrator has breached fiduciary duties, the court may direct the claims administrator to pay that judgment out of its own pocket. In either case, the claims administrator is an "obligor" under *Feinberg*. *See Ayotte* v. *Prudential Ins. Co. of Am.*, 900 F. Supp. 2d 814, 819 (N.D. Ill. 2012) (recognizing

that a party who controls eligibility for benefits and makes benefits payments, whether an insurance company or a third-party claims administrator, is an "obligor" under *Feinberg*).

As the Seventh Circuit itself recognized, *Larson* aligns with decisions from the Fifth and Ninth Circuits. Thus it aligns with the decisions that United erroneously contends fall on the other side of the imagined "split."[5]

3. *The Eighth Circuit*

Contrary to Petitioner's assertion, there is no conflict between the decision below and the Eighth Circuit's decision in *Brown* v. *J.B. Hunt Transport Services, Inc.*, 586 F.3d 1079 (8th Cir. 2009).

In *Brown*, Prudential served as the claims administrator of a fully-insured ERISA plan. The Court held that the *plan* administrator—who exercised no control over claims administration—was not a proper

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[5] United contends that Judge Posner acknowledged the alleged split in *Leister*, 546 F.3d at 879. United neglects to mention that Judge Posner had merely spotted a seeming difference between several circuit courts at the time—which had nothing to do with self-funded plans versus fully-insured plans. Rather, Judge Posner observed that the Second, Third, and Ninth Circuits on the one hand, and the Sixth, Eighth, and Eleventh Circuits on the other, varied in their "proper defendant" rules. But *Leister* preceded the Ninth Circuit's decision in *Cyr*, the Seventh Circuit's decision in *Larson*, and the Second Circuit's decision below. Those decisions wiped away any perceived differences. On top of that, Judge Posner observed that even as to this now-resolved split, there had been "less to the difference than meets the eye." *Leister*, 546 F.3d at 879.

defendant under § 1132(a)(1)(B). But the Court did not even hint that a claims administrator responsible for processing claims, determining eligibility, and paying benefits under the plan (all of which describe United here) could not be a defendant.

Nothing about the decision turned on the funding source. Nor could it. Under no circumstances would a plan administrator serve as the funding source for an ERISA plan. For self-funded plans, that's the plan sponsor's job.

Another aspect of the Eighth Circuit's decision in *Brown* pierces the illusion United attempts to create. The Eighth Circuit cited as support for its holding the Sixth Circuit's decision in *Moore* v. *Lafayette Life Insurance Co.,* 458 F.3d 416, 438 (6th Cir. 2006). *Brown*, 586 F.3d at 1088. Yet United claims that *Brown* conflicts with *Moore*. Pet. 14–15. United makes no attempt to explain why the courts of appeals see harmony where United sees only conflict.

In any event, other decisions confirm that—contrary to United's characterization—the Eighth Circuit follows the same approach used in the Sixth and Eleventh Circuits. That is: parties who control administration of the plan are proper defendants under § 1132(a)(1)(B). *Layes* v. *Mead Corp.*, 132 F.3d 1246, 1249 (8th Cir. 1998) (citing *Daniel* v. *Eaton Corp.,* 839 F.2d 263, 266 (6th Cir. 1988) and *Garren* v. *John Hancock Mut. Life Ins. Co.,* 114 F.3d 186, 187 (11th Cir. 1997)). In fact, at least one district court within the Eighth Circuit has recognized that the Eighth Circuit's "actual control" approach mirrors the analysis used by the First, Fifth, Ninth, and Eleventh Circuits. *Nystrom* v. *AmerisourceBergen*

Drug Corp., 2013 WL 5944254, at *2–3 (D. Minn., Nov. 6, 2013). Thus *Layes* make clear that—contrary to United's unsupported contention—this case would be decided the same way in the Eighth Circuit as it was in the Court below, and as it would be in the First, Fifth, Ninth, and Eleventh Circuits.

4. *The Tenth Circuit*

United contends that there is tension between the decision below and the Tenth Circuit's decision in *Geddes* v. *United Staffing Alliance Employee Medical Plan*, 469 F.3d 919, 931 (10th Cir. 2006). But in *Geddes*, the Court held that a *non*-fiduciary claims administrator to whom the plan administrator had delegated limited authority, could not be held liable under § 1132(d)(2). The Court recognized that while "[t]he fiduciary owes a duty of care to the beneficiaries," the fiduciary's agent, "assuming it is not a fiduciary," does not. *Id.* at 931–32. While the Court observed that, as of 2006, there seemed to have been divergence between the Second and Seventh Circuits on one side, and the Third and Sixth Circuits on the other, regarding whether plan administrators and fiduciaries could be sued under § 1132(a)(1)(B), that split (as this case shows) has since resolved itself. Nor did that stale split affect the Tenth Circuit's decision.[6] The Court went on to observe that "no circuit holds that a non-fiduciary . . . is liable under the terms of 29 U.S.C. § 1132(d)(2)." *Id.* at 931.

Here, however, United is a fiduciary, and so there is nothing in the Tenth Circuit's decision at all in-

[6] This is the same stale split identified by Judge Posner in *Leister*. *See* note 5, *supra*.

consistent with the decision below. Rather, *Geddes* reinforces the concept that a fiduciary may be held individually liable under § 1132(d).[7] It says nothing about whether a fiduciary can be directed to pay a judgment out of plan assets.

In sum, there is no circuit split. Because the Second Circuit's decision is correct, and aligns with the decisions of every other court of appeals to consider whether a claims administrator of a self-funded plan may be sued under § 1132(a)(1)(B), this Court's review is not warranted.

C. United is the Only Logical Defendant

Finally, the rule that United wants this Court to consider creating would make no sense. United controls all aspects of claims administration. It decides benefits claims by imposing its own policies and procedures. It is also responsible for paying benefits out of plan assets. As courts have recognized, United maintains a self-interest in minimizing benefits payments made out of plan assets, even though it administers a self-funded plan. *See Pac. Shores Hosp.* v. *United Behavioral Health*, 764 F.3d 1030, 1041 (9th Cir. 2014) (holding United liable under § 1132(a)(1)(B) in connection with its role as a claims administrator for a self-funded plan).

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[7] Although the Fourth Circuit has not published a decision on this issue, at least one district court within that circuit has observed that "the Fourth Circuit appears to be aligned with those that permit a plaintiff to bring an action against . . . ***any fiduciaries with control over the administration of the pension plan***." *Martin* v. *PNC Fin. Servs. Grp., Inc.*, 2012 WL 1802509, at *3 (W.D.N.C., May 17, 2012) (emphasis added).

United is the *only* logical defendant in a case for benefits under § 1132(a)(1)(B). Indeed, United itself has in other cases stipulated to its status as a proper defendant under § 1132(a)(1)(B). *Pac. Shores Hosp.* v. *United Behavioral Health*, 2012 WL 1123870, at *4 (C.D. Cal., Apr. 2, 2012).

Allowing a claims administrator with control over benefits determinations and payments to be sued under § 1132(a)(1)(B) only makes sense. How would it facilitate ERISA to force participants and beneficiaries to look past the party that decided its benefits claim and sue either the plan itself or the plan administrator, when those parties had nothing to do with the determination in the first place? How would discovery be conducted? What standard would be imposed to review the defendant's decision when the plan or plan administrator didn't make the decision? United offers no answers for these questions. Rather it hopes this Court won't ask, and, instead, quietly grant it immunity from ERISA and the 2008 Parity Act as to all plans for which it serves as a claims administrator for self-funded plans. Such a holding would be incompatible with ERISA.

II. There Is No Circuit Conflict On Whether a Plaintiff Who States a Claim for Equitable Relief May Seek Alternative Legal Relief

The complaint in this case makes clear that Respondents are entitled to equitable relief under § 1132(a)(3) and that legal relief under § 1132(a)(1)(B) is insufficient. Respondents allege that United has breached its fiduciary duties by violating the 2008 Parity Act. Respondents seek an injunction under § 1132(a)(3)(A) preventing United

from continuing to apply its discriminatory policies and procedures. Unlike § 1132(a)(1)(B), § 1132(a)(3)(A) authorizes an injunction against "any act or practice" which violates a substantive provision of ERISA—including the Parity Act's anti-discrimination mandate in 29 U.S.C. § 1185a.

The District Court acknowledged that "Plaintiffs have pleaded facts that, if proven, demonstrate violations of the Parity Act." Pet. App. 46a. The Court of Appeals recognized that "[t]here is no serious dispute that Denbo's claims are both adequately and plausibly alleged in the amended complaint." Pet. App. 10a. Yet the District Court dismissed Respondents' § 1132(a)(3)(A) claims based on its conclusion that Respondents could obtain all the necessary injunctive relief they sought under § 1132(a)(1)(B). In doing so, the District Court failed to recognize the limitations built into § 1132(a)(1)(B), which allow a claimant "to recover benefits due to him ***under the terms of his plan***, to enforce his rights ***under the terms of the plan***, or to clarify his rights to future benefits ***under the terms of the plan***." 29 U.S.C. § 1132(a)(1)(B) (emphasis added). It does not address injunctions to prevent statutory violations.

Thus, § 1132(a)(3)(A) appears to authorize equitable relief that would not necessarily be available under § 1132(a)(1)(B). Given these differences, the Court of Appeals correctly held that "it is too early to tell if [Respondents'] claims under § 502(a)(3) are in effect repackaged claims under § 502(a)(1)(B)." Pet. App. 16a. Furthermore, the Court correctly determined that Respondents may also be entitled to the equitable remedy of surcharge under § 1132(a)(3)(B).

The Court observed that each of the six circuits to have addressed the remedies available under § 1132(a)(3)(B) has recognized the availability of a surcharge remedy following this Court's decision in *Amara,* 131 S. Ct. 1866.

As the Fourth Circuit has noted, "[b]efore *Amara,* various lower courts, including [itself], had (mis)construed Supreme Court precedent to limit severely the remedies available to plaintiffs suing fiduciaries under Section 1132(a)(3)." *McCravy* v. *Metro. Life Ins. Co.*, 690 F.3d 176, 180 (4th Cir. 2012).

The Second Circuit distinguished situations in which dismissal of § 1132(a)(3) claims is proper where it is clear at the outset that § 1132(a)(1)(B) provides all of the relief necessary. Here, it is far from clear. And for this reason, the Second Circuit held that the District Court's dismissal was premature.

United dislikes the outcome. But it does not ask this Court to review the Court of Appeals' conclusion that Respondents have stated a claim for equitable relief under § 1132(a)(3). Instead, United assumes incorrectly that Respondents have *not* stated such a claim. Then—based on this faulty assumption—it contends that the decision below conflicts with decisions of four other circuits because the Second Circuit failed to dismiss Respondents' § 1132(a)(3) claims right out of the blocks (before discovery). But United misreads the decisions from these four circuits. No circuit court has held that a plaintiff who states a valid claim to equitable relief available un-

der only § 1132(a)(3) may not simultaneously seek relief under § 1132(a)(1)(B).

A. There is No Conflict Between the Second Circuit and the Fourth Circuit

United argues that the decision below cannot be reconciled with the Fourth Circuit's decision in *Korotynska* v. *Metropolitan Life Insurance Co.*, 474 F.3d 101 (4th Cir. 2006). But in *Korotynska*, the Court started from the premise that "there is no question that what plaintiff is pressing is a claim for individual benefits." *Id.* at 105. Accordingly, *Korotynska* does not, as United contends, stand for the broad proposition that a plaintiff cannot simultaneously assert claims for relief under § 1132(a)(1)(B) and § 1132(a)(3).

Courts within the Fourth Circuit have rejected this precise misreading of *Korotynska*, clarifying that "[t]he *Korotynska* court did not hold that bringing simultaneous claims for relief under Sections 502(a)(3) and 502(a)(1)(B) is *always* inappropriate." *England* v. *Marriott Int'l, Inc.*, 764 F. Supp. 2d 761, 779 (D. Md. 2011) (original emphasis). Rather, "*Korotynska*'s holding is that where a plaintiff can obtain complete relief under Section 502(a)(1)(B), for example, where he seeks only the payment of benefits under the terms of his ERISA plan, he cannot simultaneously bring a claim under Section 502(a)(3)." *Id.*

This view of *Korotynska* has even more force today, given the Fourth Circuit's subsequent recognition that it had previously "(mis)construed Supreme Court precedent to limit severely the remedies avail-

able . . . under Section 1132(a)(3)." *McCravy*, 690 F.3d at 180.

B. Opinions Involving Determinations Made With the Benefit of Discovery Do Not Conflict With the Decision Below

Three other decisions to which United points involved summary judgment determinations, not motions to dismiss at the pleadings stage. Start with the Fifth Circuit's decision in *Tolson* v. *Avondale Industries, Inc.*, 141 F.3d 604, 610 (5th Cir. 1998). There, in a terse discussion, the Court affirmed the district court's summary judgment ruling that § 1132(a)(1)(B) provided all of the relief to which the plaintiff could be (but was not) entitled. Subsequent courts have recognized that *Tolson* "does not mean that the mere presence of an alternative § 1132(a)(1) claim automatically precludes the potential viability of a § 1132(a)(3) claim for equitable relief." *Galutza* v. *Hartford Life & Accident Ins. Co.*, 2008 WL 2433837, at *3 n.5 (N.D. Okla., June 12, 2008).[8]

In *Wilkins* v. *Baptist Healthcare System, Inc.*, 150 F.3d 609, 612 (6th Cir. 1998), the district court decided plaintiffs' § 1132(a)(1)(B) and § 1132(a)(3) claims on a motion for summary judgment. As a result, the Sixth Circuit did not address in *Wilkins* whether a plaintiff may plead a § 1132(a)(1)(B) claim and § 1132(a)(3) claim simultaneously. But if there

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[8] United also cites *Hollingshead* v. *Aetna Health Inc.*, 589 F. App'x 732, 736 (5th Cir. 2014). There, following limited discovery, it was clear that the plaintiff had not stated a claim for equitable relief. The same is not true here, as the Second Circuit recognized.

was any doubt, the Sixth Circuit has explained elsewhere that its decision in *Hill,* 409 F.3d 710 "clarified that under some circumstances ***an ERISA plaintiff may simultaneously bring claims under both § 1132(a)(1)(B) and § 1132(a)(3)***." *Gore* v. *El Paso Energy Corp. Long Term Disability Plan*, 477 F.3d 833, 839 (6th Cir. 2007) (emphasis added). *See also Flatt* v. *Aetna Life Ins. Co. of Hartford, Conn.*, 2014 WL 6673910, at *5 (W.D. Tenn., Nov. 24, 2014) (observing that the Sixth Circuit has clarified that where a plaintiff seeks plan-wide relief, simultaneous claims under § 1132(a)(1)(B) and § 1132(a)(3)(A) are proper).

United cites *Gore* as an example of the Sixth Circuit's willingness to apply its proper remedy analysis at the pleadings stage. Pet. 28. But United neglects to mention that the district court in *Gore* had structured the case in two stages. The first stage involved *discovery* on the plaintiff's § 502(a)(1)(B) claim. *Gore*, 477 F.3d at 839. Only at the conclusion of this period of discovery did the district court analyze whether an § 1132(a)(3) remedy was necessary. That approach is entirely consistent with the Second Circuit's decision below. Nor does United mention that the Sixth Circuit concluded in *Gore* that the plaintiff's "claim of breach of fiduciary duty could not have been characterized as a denial of benefits claim," and that as a result "the district court's dismissal of Plaintiff's § 1132(a)(3) claim was in error." *Id.* at 842.

Similarly, in *Katz* v. *Comprehensive Plan of Group Insurance*, 197 F.3d 1084 (11th Cir. 1999), the court analyzed whether summary judgment was appropriate. It too had no reason to discuss pleading

standards. Recognizing that, "[i]n *Katz,* the standard applied was that governing the standard for summary judgment," courts within the Eleventh Circuit have held that "a determination of the remedies available to a plaintiff cannot be limited at the pleadings stage of a case." *Schmidt* v. *Life Ins. Co. of N. Am.*, 289 F.R.D. 357, 359 (M.D. Fla. 2012) (refusing to strike a plaintiff's simultaneous claim for relief under § 1132(a)(1)(B) and "other equitable relief").

C. The Eighth Circuit's Analysis Confirms that the Decision Below is Correct and Creates No Conflict With Other Courts

1. The Eighth's Circuit decision in *Silva* v. *Metropolitan Life Insurance Co.*, 762 F.3d 711 (8th Cir. 2014), is consistent with these decisions from the Fourth, Fifth, Sixth, and Eleventh Circuits. In *Silva*, the Eighth Circuit recognized that, in *Varity*, this Court did not hold "that when an ERISA plaintiff alleges facts supporting both a § 1132(a)(1)(B) and a § 1132(a)(3) claim, a court must or should grant a defendant's Rule 12(b)(6) motion to dismiss the latter claim." *Silva*, 762 F.3d at 726 (quoting *Black* v. *Long Term Disability Ins.*, 373 F. Supp. 2d 897, 902–03 (E.D. Wis. 2005)).

In *Silva*, the plaintiff sued his deceased son's former employer (the plan administrator) and MetLife (a plan fiduciary with control over benefits determinations). The plaintiff contended that MetLife had wrongfully denied his son's life insurance benefits, and brought suit under § 1132(a)(1)(B). The plaintiff later sought to amend his complaint to add a claim for "other appropriate equitable relief" under § 1132(a)(3). In particular, the plaintiff sought to

pursue equitable theories of surcharge, reformation, and estoppel. *Id.* at 720.

The Eighth Circuit remanded plaintiff's § 1132(a)(1)(B) claim for further consideration. The Eighth Circuit held that "the appropriate remedy under § 1132(a)(3) is the payment of benefits that were seemingly owed under the Plan." *Id.* at 724. As to whether the plaintiff was permitted to pursue simultaneous claims under § 1132(a)(1)(B) and § 1132(a)(3), the Court explained that *Varity* "prohibit[s] duplicate *recoveries* when a more specific section of the statute, such as § 1132(a)(1)(B), provides a remedy similar to what the plaintiff seeks under the equitable catchall provision, § 1132(a)(3)." *Id.* at 726 (original emphasis). It then added that, "[c]ontrary to Defendants' argument, *Varity* does not limit the number of ways a party can initially seek relief at the motion to dismiss stage." *Id.*

In that regard, *Varity* did not modify federal rules of pleading. Plaintiffs may present alternative theories of liability under Rule 8 and Rule 18 of the Federal Rules of Civil Procedure. *Varity* instructs that a plaintiff cannot recover the same benefits twice under those two provisions—not that a plaintiff is prohibited from pleading alternative claims for relief under both provisions.

In *Silva*, the Eighth Circuit distinguished its own prior cases including *Antolik* v. *Saks, Inc.*, 463 F.3d 796, 802 (8th Cir. 2006), and *Wald* v. *Southwestern Bell Corp. Customcare Medical Plan*, 83 F.3d 1002, 1006 (8th Cir. 1996), because they involved appeals from summary judgment motions. As the Eighth Circuit explained, "[a]t summary judgment, a court is

better equipped to assess the likelihood for duplicate recovery, analyze the overlap between claims, and determine whether one claim alone will provide the plaintiff with 'adequate relief.'" *Id.* at 727.

In *Korotynska*—a case United contends conflicts with *Silva*—the Fourth Circuit cited *Antolik* and *Wald* as consistent with its decision. 474 F.3d at 106. But just as those earlier decisions by the Eighth Circuit do not conflict with *Silva*, they do not conflict with *Korotynska*. Thus, there is no conflict on the question whether a plaintiff who states a claim for equitable relief may simultaneously pursue at the pleading stage legal relief under § 1132(a)(1)(B).

2. Finally, the decision below is correct. It makes no sense to force plaintiffs to bring claims exclusively for legal relief at the outset, when the available facts show that equitable relief is necessary (or at least plausible) under § 1132(a)(3) to provide an adequate and sufficient remedy. United exaggerates its contentions that plaintiffs routinely misuse § 1132(a)(3). Even if accurate, the type of staged discovery used in *Gore* can alleviate any concerns.

CONCLUSION

The Court should deny the petition for a writ of certiorari.

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