NO. _____

In the Supreme Court of the United States

BRENDA OLIVAR,

Petitioner,

v.

PUBLIC SERVICE EMPLOYEE CREDIT UNION LONG TERM DISABILITY PLAN,

Respondent.

CAROLINE BURTON,

Petitioner,

v.

COLORADO ACCESS A/K/A COLORADO ACCESS LONG TERM DISABILITY PLAN,

Respondent.

On Petition for Writs of Certiorari to the Colorado Supreme Court

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

ERISA states that "[a]n employee benefit plan may sue or be sued under this subchapter as an entity. . . . In a case where a plan has not designated in the summary plan description of the plan an individual as agent for the service of legal process, service upon the Secretary shall constitute such service." 29 U.S.C. § 1132(a)(1)(B).

Here, Plaintiffs sued their ERISA Plans as entities and served the Secretary of Labor. Both plan summaries designate only a corporation as agent for service. Citing splits in authority, the Colorado Supreme Court held that the Plans were not proper defendants because they were insured and that service on the Secretary was improper because the word "individual" includes corporations even though ERISA differentiates between an "individual" and a "person," specifically defining only "person" to include corporations. The questions presented are thus:

1. Whether an ERISA benefit plan as an entity is always a proper defendant in an action to recover benefits brought pursuant to 29 U.S.C. § 1132(a)(1)(B) as held by the 2nd Circuit, the State of New Mexico and others, or is the ERISA plan sometimes not a proper defendant as held here by the Colorado Supreme Court and the 11th Circuit.

2. Whether service of process on the Secretary of Labor is proper under 29 U.S.C. § 1132(d)(1) when a summary plan description designates a corporation for service given that ERISA differentiates between an "individual" and a "person"—specifically defining only the term "person" to include corporations.

PARTIES TO THE PROCEEDINGS

The following two cases were joined together in the Colorado Supreme Court. Per Supreme Court Rule 12.4, Petitioners Brenda Olivar and Carolina Burton are filing a joint petition.

Petitioner Brenda Olivar was Plaintiff and Appellant below in Colorado Supreme Court Case No: 2016SC163.

Respondent Public Service Employee Credit Union Long Term Disability Plan was Defendant and Appellee below in Colorado Supreme Court Case No: 2016SC163.

Petitioner Caroline Burton was Plaintiff and Appellant below in Colorado Supreme Court Case No: 2015SC801.

Respondent Colorado Access, a/k/a Colorado Access Long Term Disability Plan was the Defendant and Appellee below in Colorado Supreme Court Case No: 2015SC801.

RULE 29.6 DISCLOSURE

Petitioners have no corporate affiliations.

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PETITION FOR A WRIT OF CERTIORARI

Brenda Olivar respectfully petitions for a writ of certiorari to review the judgment of the Colorado Supreme Court.

Caroline Burton respectfully jointly petitions for a writ of certiorari to review the judgment of the Colorado Supreme Court.

OPINIONS BELOW

The Supreme Court of Colorado joined the *Olivar* and *Burton* cases and issued its Opinion on February 12, 2018 (App.1a).

The Opinion of the Colorado Court of Appeals in *Brenda Olivar v. Public Service Employee Credit Union Long Term Disability Plan*, No. 14CA1734, was issued on January 21, 2016. (App.22a). The Order of the District Court, City and County of Denver, Colorado granting summary judgment to Defendant was issued on July 21, 2014. (App.35a). The Order of the District Court, City and County of Denver, Colorado, entering default judgment in favor of Petitioner Olivar was issued on March 27, 2007. (App.61a).

The Opinion of the Colorado Court of Appeals in *Caroline Burton v. Colorado Access, a/k/a Colorado Access Long Term Disability Plan*, No. 2015-COA-111, was issued on August 13, 2015. (App.62a) The Order of the District Court, City and County of Denver, Colorado granting summary judgment to Defendants

was issued on July 21, 2014. (App.35a). The Order of the District Court, City and County of Denver, Colorado, entering default judgment in favor of Petitioner Burton was issued on May 16, 2008. (App.83a).

JURISDICTION

The Colorado Supreme Court issued a joint Opinion in both the *Burton* and *Olivar* cases on February 12, 2018. Neither party sought rehearing. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(a) because the state court's decision is based solely on interpretation of a federal statute.

CONSITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- **29 U.S.C. § 1132(a)**

  A civil action may be brought-

  (1) by a participant or beneficiary-

  (A) for the relief provided for in subsection (c) of this section, or

  (B) 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;

(2) by the Secretary, or by a participant, beneficiary or fiduciary for appropriate relief under section 1109 of this title;

(3) by 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;

- 29 U.S.C. § 1132(d)(1)

An employee benefit plan may sue or be sued under this subchapter as an entity. Service of summons, subpoena, or other legal process of a court upon a trustee or an administrator of an employee benefit plan in his capacity as such shall constitute service upon the employee benefit plan. In a case where a plan has not designated in the summary plan description of the plan an individual as agent for the service of legal process, service upon the Secretary shall constitute such service. The Secretary, not later than 15 days after receipt of service under the preceding sentence, shall notify the administrator or any trustee of the plan of receipt of such service.

STATEMENT OF MATERIAL FACTS

Brenda Olivar and Caroline Burton (hereinafter "Claimants") both brought ERISA benefits actions in Colorado state courts against their employee benefit plans as entities pursuant to 29 U.S.C. § 1132. (App.4a & App.6a). In both cases, Claimants named their ERISA benefit plan (each a "Plan", and collectively, the "Plans") because it is used as a defined term later as the sole defendant. (App.4a & App.7a).

Brenda Olivar brought a benefit claim against her ERISA plan, Public Service Employee Credit Union Long Term Disability Plan. Ms. Olivar's summary plan description designated a company, Public Service Employee Credit Union ("PSCU") as the agent for service of process. (App.6a). Because the plan summary did not designate an individual as agent for service, Olivar served the Secretary of the U.S. Department of Labor on December 5, 2006.

Likewise, Caroline Burton brought her benefit claim against her ERISA plan, Colorado Access, in May of 2007. (App.4a). Ms. Burton's summary plan description designated a company, Colorado Access, as agent for service of process. (App.4a). Because the plan summary did not designate an individual as agent for service, Burton served the Secretary of the U.S. Department of Labor on May 11, 2007.

In both cases, service of process was made upon the Secretary of the Department of Labor (hereinafter "the Secretary") pursuant to 29 U.S.C. § 1132(d)(1) because neither summary plan description (hereinafter

"SPD") designated an individual for service of process, but rather each SPD designated a corporation as agent for service. (App.4a & 6a-7a).

It is undisputed that the Secretary was properly served and that both Plans failed to respond to the Complaints. In both cases, final default judgments were entered against each plan defendant. (App.61a & 83a).

In both cases, the trial courts set aside the Judgments based on holdings that the Judgments were void because service on the Secretary did not constitute proper service. (App.52a & App.78a).

In both cases, the trial courts later held that the Plans were not the proper party defendants in an ERISA benefit action against an insurance-funded ERISA plan and entered summary judgment against Claimants. (App.35a & App.78a). These decisions were upheld on appeal by the Colorado Court of Appeals and the Colorado Supreme Court. (App.22a & 62a).

Both issues presented for review depend on statutory interpretation and application of 29 U.S.C. § 1132(d)(1) which states:

> An employee benefit plan may sue or be sued under this subchapter as an entity. Service of summons, subpoena, or other legal process of a court upon a trustee or an administrator of an employee benefit plan in his capacity as such shall constitute service upon the employee benefit plan. In a case where a plan has not designated in the summary plan description of the plan an indi-

> vidual as agent for the service of legal process, service upon the Secretary shall constitute such service. The Secretary, not later than 15 days after receipt of service under the preceding sentence, shall notify the administrator or any trustee of the plan of receipt of such service.

29 U.S.C. § 1132(d)(1).

The Colorado Supreme Court held that the Plans' respective insurers, not the Plans themselves, are the only proper defendants in an ERISA action for benefits due when the Plans provide that the insurers are obligated to pay benefits due. (App.21a).

The Colorado Supreme Court also held that for purposes of 29 U.S.C. § 1132(d)(1), the term "individual" includes corporations and that it would have been absurd for Congress not to include corporations within the intended meaning of the term "individual" even though Congress expressly defined the word "person" to include both individuals and corporations, and then chose to use the word "individual" and not to use the word "person" in section 1132(d)(1). (App.21a).

Based on these holdings, the Colorado Supreme Court upheld the trial courts' decision to set aside the default judgments entered against the ERISA plans holding that service of process made on the Secretary of the U.S. Department of Labor was improper and the judgments void, (App.21a).

The Colorado Supreme Court also held that summary judgment was proper in both cases because Claimants named their ERISA plans as defendants

rather than naming their insurers as defendants. (App.21a).

REASONS FOR GRANTING THE PETITION

The Court should grant this petition because the decision of the Colorado Supreme Court has widened the existing conflict between the U.S. Circuit Courts of Appeal regarding whether an ERISA benefit plan is always a proper defendant in an action to recover benefits under 29 U.S.C. §1132(a)(1)(B), and because the Colorado Supreme Court's interpretation of 29 U.S.C. §1132(d)(1) regarding service of process conflicts with U.S. Supreme Court precedent regarding interpretation of the term "individual" when used in similar federal statutes which define the word "person" to include individuals and corporations but which contain no definition of the word "individual."

I. PROPER PARTY DEFENDANT ISSUE

The Federal Circuit Courts of Appeal, as well as the appellate courts of two States, are widely split on which entity or entities constitute proper defendants in an ERISA benefit action. Recognizing this spilt, the Colorado Supreme Court took the opportunity in the Burton and Olivar cases to expand upon the holdings of other appellate courts and held that an ERISA plan is not a proper defendant in a benefit action if an insurance company is responsible for making benefit payments.

This holding by Colorado Supreme Court conflicts with the approach of most Federal Circuit Courts of

Appeal, and directly conflicts with long-standing precedent of the 2nd Circuit which specifically holds that an ERISA plan is always a proper party in a benefit action, even when as here the plan is fully funded by an insurance policy and the insurer makes all benefit decisions. *Chapman v. ChoiceCare Long Island Term Disability Plan*, 288 F.3d 506, 510 (2nd Cir. 2002). Justice Sotomayor was one of the 2nd Circuit Judges concurring in the *Chapman* decision prior to her elevation to the U.S. Supreme Court.

In a case very similar to the instant cases, and without specifically relying on *Chapman*, the New Mexico Court of Appeals came to the same conclusion as the 2nd Circuit and held the ERISA plan itself is always a proper defendant in a benefit action. *Kirby v. TAD Resources Intern., Inc.*, 136 N.M. 148, 95 P.3d 1063, 153-158 (N.M.App. 2004).

This is not the only split in authority on this issue. The 11th Circuit has held that an ERISA plan is never a proper defendant in a benefit action because an "order enjoining the payment of benefits under section 502(a)(1)(B) must be directed to a person or entity other than the plan itself." *Hunt v. Hawthorne Associates, Inc.*, 119 F.3d 888, 908 (11th Cir. 1997).

In addition, one District Court within the 11th Circuit has more recently held that a benefit action may not be brought against an ERISA plan when an insurer was solely responsible for claims decisions. *Milton v. Life Ins. Co. of N. Am.*, CV-12-BE-864-E, 2012 WL 2357800, at *2 (N.D. Ala. June 20, 2012).

These directly conflicting splits in authority are not the only conflicting approaches to this issue among the various Circuit Courts of Appeal.

Previously, the uniform and long-standing rule among the Circuit Courts of Appeal was that all benefit actions must be brought only against the ERISA plan as an entity. *See Rush Prudential HMO, Inc. v. Moran*, 122 S.Ct. 2151, 536 U.S. 355, 363 n.3 (2002) *citing Everhart v. Allmerica Financial Life Ins. Co.*, 275 F.3d 751, 754-756 (9th Cir. 2001); *Garren v. John Hancock Mut. Life Ins. Co.*, 114 F.3d 186, 187 (11th Cir. 1997); *Jass v. Prudential Health Care Plan, Inc.*, 88 F.3d 1482, 1490 (7th Cir. 1996).

At the time Burton and Olivar filed their Complaints in 2006 and 2007, this was the state of the law and the issue seemed resolved with the Circuits unified in holding that there was "no reason to depart from the established precedent of this circuit, and of every other circuit that has expressly considered the issue, that §§ 1132(a)(1)(B) does not permit suits against a third-party insurer to recover benefits when the insurer is not functioning as the plan administrator." *Everhart v. Allmerica Fin. Life Ins. Co*, 275 F.3d 751, 756 (9th Cir. 2001) *citing Jass v. Prudential Health Care Plan, Inc.*, 88 F.3d 1482, 1490 (7th Cir. 1996) ("ERISA permits suits to recover benefits only against the Plan as an entity . . ."); *Lee v. Burkhart*, 991 F.2d 1004, 1009 (2d Cir. 1993) (same).

In fact, on the very day Ms. Olivar filed her Complaint, the 10th Circuit held that "[t]he ERISA statute is clear: ERISA beneficiaries may bring claims against the plan as an entity and plan administrators." *Geddes v. United Staffing Alliance Employee Medical Plan*, 469 F.3d 919, 931 (10th Cir. 2006).

U.S. District Courts within the 10th Circuit still apply *Geddes* and hold that the plan itself is always a proper defendant in benefit actions, with one recently finding that a "Plan's argument to the effect that it may not be sued because it has contracted with First UNUM to make payments to Plan beneficiaries is wholly unsupported by the language of the statute." *Meyer v. Unum Life Ins. Co. of America*, Civil Action 12-1134-KHV (KSDC, April 8, 2013). The Colorado Supreme Court here adopted the exact opposite position.

It is important to note that neither the insurer in Burton nor the insurer in Olivar is the named administrator of the plan. Both Plans identify the employer as the plan administrator. Therefore, had either Claimant filed suits against their insurance company rather than their ERISA plan, which is what the Colorado Supreme Court has now held they should have done, their suits would have been subject to immediate dismissal in 2006 and 2007 for naming an improper defendant.

While most courts still agree with the 10th Circuit that plaintiffs in benefit actions may name the ERISA plan as an entity, or name the plan administrator, or name both, other Circuits have either adopted different tests for identifying a single proper defendant or have broadened the scope to include almost anyone as a proper defendant.

In 2011, the 9th Circuit expanded the list of allowable proper defendants to include the plan itself, the plan administrator, or the insurer which denied the claims even when the insurer was not the plan administrator. *Cyr v. Reliance Standard Life Ins. Co.*,

642 F.3d 1202, 1207 (9th Cir. 2011). Under this standard, an insurance company which denies benefits, even though the insurer is not the plan administrator, is one possible defendant, but the plan administrator and the plan itself also remain proper defendants. This rule allows plaintiffs to name one or more of those entities as a defendant in any given case. This approach also directly conflicts with the holding of the Colorado Supreme Court which would allow only a suit against the insurance company and not the plan or the plan administrator here because neither plan administrator was the entity which denied Claimant's claims.

Since *Chapman* was decided, the 2nd Circuit has also expanded its list of possible defendants to include the plan, the plan administrator, and any claims administrators which exercise control over the claim process. *New York State Psychiatric Ass'n v. United-Health Grp.*, 798 F.3d 125, 132-33 (2nd Cir. 2015). However, the *Chapman* precedent stands and the ERISA plan itself is still always a proper defendant if named in the Complaint within the 2nd Circuit. *The Plastic Surgery Group, P.C. v. United Healthcare Ins. Co. of N.Y., Inc.*, 64 F.Supp.3d 459, 469-70 (E.D.N.Y. 2014).

The 6th Circuit seems to hold that the only proper defendant in a benefit action are entities which "are shown to control administration of a plan." *Daniel v. Eaton Corp.*, 839 F.2d 263, 266 (6th Cir. 1988). It is unclear if the 6th Circuit continues to allow suits against the plan as an entity because the plan cannot control itself.

The 1st Circuit holds that "the proper party defendant in an action concerning ERISA benefits is the party that controls administration of the plan." *Gomez-Gonzalez v. Rural Opportunities, Inc.*, 626 F.3d 654, 665 (1st Cir. 2010). Since neither insurance company in the instant case is a plan administrator, neither would be proper defendants under the 1st Circuit's approach. However, dicta in an older 1st Circuit case does indicate that the plan itself may be named as a defendant. *See Terry v. Bayer Corp.*, 145 F.3d 28, 35 (1st Cir. 1998).

In 2013, the 7th Circuit changed its rule which had prohibited all suits against insurers for benefits holding:

> Although a claim for benefits ordinarily should be brought against the plan (because the plan normally owes the benefits), where the plaintiff alleges that she is a participant or beneficiary under an insurance-based ERISA plan and the insurance company decides all eligibility questions and owes the benefits, the insurer is a proper defendant in a suit for benefits due under § 1132(a)(1)(B).

Larson v. United Healthcare Ins. Co., 723 F.3d 905, 915-16 (7th Cir. 2013).

Although no 7th Circuit court has adopted such a broad reading of *Larson*, the Colorado Supreme Court read the holding in *Larson* to mean that the plan itself may not owe the benefits if it is insured and therefore the plan itself is not a proper defendant when the plan is insured.

Long before any splits in authority arose on this issue, this Court recognized that:

> ERISA's § 502 provides that civil enforcement actions may be brought by particular persons against ERISA plans, to secure specified relief, including the recovery of plan benefits. Suits for benefits or to enforce a participant's rights under a plan may be brought in either federal or state court. 29 U.S.C. § 1132(e). Section 502, which provides that a plan may "sue or be sued" as an entity in § 502 actions, 29 U.S.C. § 1132 (d)(1), clearly contemplates the enforcement of money judgments against benefit plans, 29 U.S.C. § 1132(d)(2).

Mackey v. Lanier Collection Agency & Service, Inc., 486 U.S. 825, 832-33 (1988).

In addition, a Commentary on benefits claims litigation published in Volume 29 of the United States Code Service following § 1132 states:

> The complaint seeking to recover benefits should name the plan administrator as a defendant, as that party has overall control of the operation of the plan. The complaint should also name as a defendant any other party, such as an insurance company, that exercises actual control over the decision whether or not to pay benefits under the plan. The plan itself may be made a defendant, as it can be sued as an entity by virtue of ERISA § 502(d)(1) (29 U.S.C. § 1132(d)(1), but its absence should not limit the equit-

> able relief granted if the plan's fiduciaries are defendants.

Powers v. Bluecross Blueshield of Illinois, 947 F.Supp. 2d 1139, 1148049 (D.Colo. 2013) *quoting* K. Pilger, Commentary, "Benefits Claims Litigation under ERISA § 502(a)(1)(B)," 29 U.S.C. § 1022 (2011).

As shown above, only a limited number of courts throughout the country now agree with this commentary.

Given the hopelessly divergent and contradictory holdings of courts throughout the country, it is difficult or impossible for anyone filing an ERISA benefit action to know with certainty which entity should be named as defendant. If plaintiffs name the plan, they face a motion to dismiss citing authority stating that the insurance company should be named. If plaintiffs name the insurance company, they face a motion to dismiss citing authority that the insurer is not a proper defendant. If plaintiffs name the plan administrator, they face a motion to dismiss citing authority that a plan administrator which does not actually decide the benefit claim, which is usually the case, is not a proper party.

Possibly worse, if plaintiffs name every possible entity to avoid being shut out of court completely, then almost every ERISA case is needlessly burdened with three or more defendants, each of which must provide for its own defense, and all of which can file motions to dismiss claiming one of the other defendants is the only proper defendant. This needlessly increases the cost and complexity of litigation and causes more entities than necessary to be named defendants.

These contradictory holdings of various courts directly conflict with declared purpose of ERISA to protect "the interests of participants in employee benefit plans and their beneficiaries . . . by providing for appropriate remedies, sanctions, and ready access to the Federal courts." 29 U.S.C. § 1001(b).

A consistent approach to this issue needs to be clearly established by this Court so that benefit claimants throughout the country know which entity or entities to name as defendants and so that multiple improper defendants are spared the need to defend themselves in court.

II. SERVICE OF PROCESS ON THE SECRETARY

Both Olivar and Burton's summary plan descriptions designate corporations, their former employers, as agents for service of process. (App.4a & App.6a). ERISA states that "[i]n a case where a plan has not designated in the summary plan description of the plan an individual as agent for the service of legal process, service upon the Secretary shall constitute such service." 29 U.S.C. § 1132(d)(1). Both Claimants served the Secretary in reliance on this statute.

The Colorado Supreme Court found that "the ordinary meaning of "individual" isn't limited to natural persons," and that it would be absurd for Congress to have intended the word "individual" to be limited to only natural persons in this case because it is not illegal to designate a corporation as agent for service of process. The rationale for this holding conflicts with the established precedent of this Court.

ERISA does not define the term "individual," but does specifically define the term "person," to include

a number of different entities, including both individuals and corporations. According to the statute, "[t]he term 'person' means an individual, partnership, joint venture, corporation, mutual company, joint-stock company, trust, estate, unincorporated organization, association, or employee organization." 29 U.S.C. § 1002(9). Therefore, the statute clearly differentiates between the term "individual" and the term "corporation."

The Colorado Supreme Court's approach to interpreting 29 U.S.C. § 1132(d)(1) directly conflicts with the approach adopted by the U.S. Supreme Court when interpreting the term "individual" used in the TVPA, which like ERISA does not define the term. This Court held that "because the TVPA does not define the term 'individual,' we look first to the word's ordinary meaning. As a noun, 'individual' ordinarily means '[a] human being, a person.' After all, that is how we use the word in everyday parlance." *Mohamad v. Palestinian Authority*, 566 U.S. 449, 454 (2012)(internal citations removed).

Applying this Court's analysis from *Mohamad* to the use of the term "individual" in section 1132(d)(1) demonstrates that the word individual as used refers only to an actual human being. In fact, each and every time the ERISA statute uses the term "individual" as a noun, it clearly refers to an actual human. For example, in a criminal penalties section, ERISA specifically lays out different penalties for persons who are human and for persons who "are not an individual," stating:

> Any person who willfully violates any provision of part 1 of this subtitle, or any regula-

> tion or order issued under any such provision, shall upon conviction be fined not more than $100,000 or imprisoned not more than 10 years, or both; except that in the case of such violation by a person not an individual, the fine imposed upon such person shall be a fine not exceeding $500,000.

29 U.S.C. § 1131(a) (emphasis added).

"There is a presumption that a given term is used to mean the same thing throughout a statute." *Brown v. Gardner*, 513 U.S. 115, 118, (1994) *citing Atlantic Cleaners & Dyers, Inc. v. United States*, 286 U.S. 427, 433 (1932).

In contrast to the statutory construction approach adopted by the U.S. Supreme Court, the holdings of the Colorado state courts below essentially equate the word "individual" to the word "person," or worse, write the word "individual" completely out of the statute.

Congress could have used the word "person" rather than the word "individual" in section 1132(d)(1). In that case, the section would read: "In a case where a plan has not designated in the summary plan description of the plan a person as agent for the service of legal process, service upon the Secretary shall constitute such service." Alternately, Congress could have just left out the phrase "an individual" completely and instead stated "In a case where a plan has not designated in the summary plan description of the plan an agent for the service of legal process, service upon the Secretary shall constitute such service."

If Congress had made either choice, the Courts below would be correct and the section would require plaintiffs to serve any entity designated for service in the SPD—only if no agent were designated in the SPD, would service on the Secretary be appropriate. However, neither option is the equivalent of the language chosen by Congress. Therefore, the holding of the Colorado Supreme Court on this issue constitutes a rewriting of the ERISA statute rather than merely an interpretation of the statute as written.

This Court should exercise its authority to interpret federal statutes, to prevent state courts from ignoring the careful language choice of Congress, and to ensure that time-tested and long-established rules of federal statutory construction adopted by this Court are consistently applied throughout the country. State Courts should not be allowed to find the policy choices of the United States Congress absurd without good cause, which is precisely what the Colorado Courts have done here.

CONCLUSION

Petitioners Caroline Burton and Brenda Olivar pray this Court issue a Writ of Certiorari to Colorado Supreme Court to resolve important matters of ERISA interpretation and application. First, to overturn the Colorado Supreme Court's dismissal of Claimant's cases against their ERISA benefit plans as entities. Second, to hold that the term "individual" as used in 29 U.S.C. § 1132(d)(1) does not include a corporation and that therefore service of process on the Secretary in these actions constituted proper service. Lastly, based on these holdings, to overturn the Colorado Supreme Court's holding that the default judgments were void for improper service and to restore the default judgments originally entered in the trial courts in favor of Ms. Burton and Ms. Olivar.

Respectfully submitted,

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