No. 25-590

In the Supreme Court of the United States

JERRY ALDRIDGE, ET AL., PETITIONERS

v.

REGIONS BANK

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTIONS PRESENTED

1. Whether an action for the remedy of surcharge seeks "equitable relief" within the meaning of Section 502(a)(3) of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1132(a)(3).

2. Whether ERISA preempts petitioners' state-law claims.

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INTEREST OF THE UNITED STATES

This brief is submitted in response to the Court's order inviting the Solicitor General to express the views of the United States. In the view of the United States, the petition for a writ of certiorari should be denied.

INTRODUCTION

Petitioners in this case are participants in an employee benefits plan who allege that respondent mismanaged the trust that held their benefits. They brought a claim for "surcharge"—a monetary remedy for losses to a trust that developed in the courts of equity in the days of the divided bench. Petitioners sought that remedy under Section 502(a)(3) of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1132(a)(3), which authorizes plan participants to obtain "appropriate equitable relief" to redress violations of ERISA or the terms of the plan. Petitioners also brought

state-law claims for (among other things) breach of fiduciary duty and breach of contract.

The Sixth Circuit rejected petitioners' federal- and state-law claims. The court concluded, as a categorical matter, that surcharge too closely resembles money damages to qualify as "equitable relief" under Section 502(a)(3). See Pet. App. 33a. It further held that petitioners' state-law claims are expressly preempted by ERISA Section 514(a), 29 U.S.C. 1144(a). Pet. App. 25a.

The court of appeals erred in its analysis of surcharge. Properly understood, surcharge can qualify as "appropriate equitable relief" under Section 502(a)(3), but only in a suit against a fiduciary for breach of fiduciary duties. See *CIGNA Corp.* v. *Amara*, 563 U.S. 421, 442 (2011). This case, however, is not a suitable vehicle to address the availability of surcharge under Section 502(a)(3), because of the unusual nature of the plan at issue here. So-called "top-hat plans" like the one involved in this case are not subject to ERISA's fiduciary-duty rules, see 29 U.S.C. 1101(a), and the parties dispute whether respondent qualifies as a fiduciary in the relevant sense. The Court would need to resolve that threshold issue before it could address the surcharge question on which petitioners seek review. And deciding the surcharge question in the idiosyncratic context of a top-hat plan might provide lower courts and litigants with limited guidance in more typical cases going forward.

Petitioners also ask this Court to review the Sixth Circuit's holding that their state-law claims are preempted. That holding is correct and does not conflict with any decision of another court of appeals. The petition for a writ of certiorari should be denied.

STATEMENT

1. a. ERISA protects "the interests of participants in employee benefit plans and their beneficiaries" by "establishing standards of conduct" for plan fiduciaries and "providing for appropriate remedies, sanctions, and ready access to the Federal courts." 29 U.S.C. 1001(b). Among other requirements, ERISA obligates plan fiduciaries to carry out their duties "with the care, skill, prudence, and diligence" of a "prudent man" under the circumstances, and to act in accordance with governing plan documents. 29 U.S.C. 1104(a)(1)(B); see 29 U.S.C. 1104(a)(1)(D).

ERISA Section 502(a), 29 U.S.C. 1132(a), establishes a "comprehensive civil enforcement scheme." *Aetna Health Inc.* v. *Davila*, 542 U.S. 200, 208 (2004) (citation omitted). Section 502(a)'s subsections authorize various causes of action, including an action to enforce the terms of a plan and an action to recover losses to a plan caused by a fiduciary's breach of duties. 29 U.S.C. 1132(a)(1)(B) and (2); see 29 U.S.C. 1109. This case involves Section 502(a)(3), which authorizes 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(a)(3).

This Court has described ERISA's remedial scheme as "exclusive," in light of the statute's "expansive preemption provisions." *Davila*, 542 U.S. at 208-209. Section 514 provides that, subject to certain limited exceptions, 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).

b. Some ERISA provisions do not apply to certain plans for high-level employees, colloquially known as "top-hat plans." See U.S. Dep't of Labor Op. No. 90-14A, 1990 WL 123933 (May 8, 1990). Congress determined that high-level employees "would not need" all of the "substantive rights and protections" that ERISA provides, because "by virtue of their position or compensation level," those employees "have the ability to affect or substantially influence, through negotiation or otherwise, the design and operation of their deferred compensation plan." *Id.* at *1. Congress therefore exempted top-hat plans from ERISA's requirements pertaining to vesting, funding, and—especially relevant here—fiduciary responsibilities. *Id.* at *2; see 29 U.S.C. 1051(2), 1081(a)(3), 1101(a)(1).

To qualify for the top-hat-plan exemption, a plan must be limited to a "select group of management or highly compensated employees," and it must be "unfunded." 29 U.S.C. 1101(a)(1). A top-hat plan is "'unfunded'" if the plan assets "are the general assets of the employer and are subject to the claims of the employer's creditors" in the event of insolvency. *In re IT Grp., Inc.*, 448 F.3d 661, 665 (3d Cir. 2006) (quoting David J. Cartano, *Taxation of Compensation & Benefits* § 20.01, at 709 (2004)). That arrangement carries risk for employees, who "may never receive the money if the company becomes insolvent." *Ibid.* (citation omitted). But it also produces a tax benefit: "[t]he employee is not subject to tax on the compensation until he or she actually receives the deferred amount," *ibid.*, at which point he or she "will likely have less income (and fall in a lower tax bracket)," Pet. App. 8a.

To provide top-hat-plan participants with some measure of security, employers sometimes put their benefits

into an account known as a "rabbi trust"—so named because the IRS first addressed the arrangement in a letter to a synagogue concerning benefits set aside for its rabbi. Pet. App. 9a (citation omitted), see IRS Priv. Ltr. Rul. 8113107 (Dec. 31, 1980). The assets in a rabbi trust are severed from general corporate assets and can be used only to pay the participants' benefits. See Pet. App. 9a. But the arrangement still satisfies ERISA's requirement that top-hat plans be "unfunded," 29 U.S.C. 1101(a)(1), because the trust's assets remain available to pay the company's creditors in the event of insolvency. See U.S. Dep't of Labor Op. No. 91-16A, 1991 WL 60254 (Apr. 5, 1991).

2. a. Petitioners are former high-level employees of the restaurant chain Ruby Tuesday, Inc., who participated in Ruby Tuesday's top-hat retirement and pension plans. Pet. App. 9a, 51a. Ruby Tuesday's predecessor established a rabbi trust for the plans and entered into a contract through which respondent's predecessor agreed to oversee that trust. *Id.* at 9a-10a. The rabbi-trust agreement "incorporated by reference" the terms of the top-hat plans. D. Ct. Doc. 19-3, at 1 (May 31, 2021) (Trust Agreement).

The agreement tasked respondent with the general "day-to-day administration of the [p]lans." Pet. App. 10a; see Trust Agreement 6-8. It also imposed several specific duties on both respondent and Ruby Tuesday itself in the event that Ruby Tuesday underwent a change in control. See Trust Agreement 8-10. For example, the agreement required Ruby Tuesday "to fund" the plans with "the present value actuarial equivalent of unpaid benefits" within 30 days after any change of control. *Id.* at 6. It further directed respondent to terminate the trust upon receipt of a "writing" to that effect

signed by Ruby Tuesday. *Id.* at 15. And it required respondent "to take any and all legal action to enforce" Ruby Tuesday's obligations under the trust agreement. *Id.* at 17.

b. Between 2017 and 2021, respondent allegedly breached the trust agreement in three ways. See Pet. App. 10a. First, after Ruby Tuesday was acquired by a private investment firm in December 2017, respondent failed to compel Ruby Tuesday to fund the plans, as the agreement required respondent to do following a change in control. *Ibid.* Second, when Ruby Tuesday's board terminated the plans in March 2019, respondent failed to notify plan participants of their right to a lump-sum payout. *Ibid.* Finally, in July 2020, respondent ceased all benefit payments to participants based on Ruby Tuesday's oral instruction, rather than waiting for written notice, which Ruby Tuesday did not provide until September 2020. *Id.* at 10a-11a.

In October 2020, Ruby Tuesday filed for Chapter 11 bankruptcy. Pet. App. 11a. The bankruptcy court ordered respondent to transfer the assets held in the rabbi trust to the bankruptcy estate for the benefit of Ruby Tuesday's creditors. *Id.* at 11a, 44a. Petitioners (and other plan participants) initially objected, but they ultimately settled with Ruby Tuesday's bankruptcy estate and received their fees and a share of the assets held in the fund. *Id.* at 11a, 44a-55a In exchange, petitioners waived their right to appeal the bankruptcy-court orders directing respondent to pay the trust funds into the bankruptcy estate. *Id.* at 11a.

c. Petitioners then sued respondent in the United States District Court for the Eastern District of Tennessee. See Pet. App. 54a. Their amended complaint asserted a claim for "'appropriate equitable relief'" un-

der ERISA Section 502(a)(3), "in the form of equitable surcharge in the amounts that should have been paid to [them] as benefits under the terms of the Plans and the Trust." Am. Compl. ¶ 161. Petitioners also brought state-law claims for breach of fiduciary duty, breach of trust, breach of contract, and negligence. *Id.* ¶¶ 162-185.

The district court dismissed petitioners' state-law claims, concluding that they were preempted by ERISA Section 514, 29 U.S.C. 1144. Pet. App. 65a.

After discovery, the district court granted summary judgment to respondent on petitioners' remaining ERISA claim. Pet. App. 49a. The court held that petitioners' surcharge claim did not qualify as a claim for "equitable relief" within the meaning of Section 502(a)(3) because petitioners were essentially seeking compensatory damages. *Id.* at 48a.

d. The court of appeals affirmed both judgments. Pet. App. 39a. The court first held that petitioners' state-law claims were expressly preempted under 29 U.S.C. 1144(a) because those claims have a "connection with" the plans. Pet. App. 21a-22a (quoting *Shaw* v. *Delta Air Lines, Inc.*, 463 U.S. 85, 97 (1983)); see *id.* at 14a-27a. The court next concluded that petitioners' ERISA claim for surcharge did not seek "equitable relief" within the meaning of Section 502(a)(3) because petitioners were seeking the legal remedy of "damages under another label." *Id.* at 7a; see *id.* at 27a-39a. The court of appeals acknowledged that, in *CIGNA Corp.* v. *Amara*, 563 U.S. 421 (2011), this Court had identified surcharge as an "exclusively equitable" remedy that was available in equity courts during the time of the divided bench. Pet. App. 33a (quoting *CIGNA*, 563 U.S. at 442). But the court viewed *CIGNA*'s treatment of surcharge as "dicta" that "conflicts with" this Court's earlier inter-

pretation of Section 502(a)(3) in *Mertens* v. *Hewitt Associates*, 508 U.S. 248 (1993). Pet. App. 34a.

DISCUSSION

In the government's view, the petition for a writ of certiorari should be denied. As to the first question presented, the court of appeals erred in concluding that the term "equitable relief" in ERISA Section 502(a)(3), 29 U.S.C. 1132(a), categorically excludes monetary surcharge remedies. This case is a poor vehicle for resolving that general question, however, because the top-hat plan at issue here differs in significant respects from typical ERISA plans, and the defendant in this case is not subject to ERISA's fiduciary provisions. With respect to the second question presented, the court correctly held that ERISA preempts petitioners' state-law claims, and its decision does not conflict with any decision of this Court or another court of appeals. Further review is not warranted.

A. This Case Is A Poor Vehicle For Deciding Whether And In What Circumstances A Monetary Surcharge Remedy Qualifies As "Equitable Relief" Under ERISA Section 502(a)(3)

Petitioners first ask (Pet. i, 14-33) this Court to decide whether surcharge qualifies as "equitable relief" under ERISA Section 502(a)(3), 29 U.S.C. 1132(a)(3). Although the court of appeals erred in analyzing that question, this case is a poor vehicle to resolve the issue. The availability of surcharge as a remedy under Section 502(a)(3) turns on whether the plaintiff is suing a fiduciary for an alleged violation of a fiduciary duty. See *CIGNA Corp.* v. *Amara*, 563 U.S. 421, 442 (2011). This case, however, arises in the unusual context of a top-hat plan that is not subject to ERISA's fiduciary require-

ments, and it involves a defendant whose fiduciary status is disputed. In these idiosyncratic circumstances, it is not clear that any other court of appeals would have reached a different bottom-line conclusion.

This Court previously granted certiorari on the question whether surcharge is available *against a fiduciary* under Section 502(a)(3), but it did not ultimately decide the question in that case. See *LaRue* v. *DeWolff, Boberg & Assocs., Inc.*, 552 U.S. 248, 252 (2008). If the Court wishes to revisit the issue, it should do so in a case in which the defendant is undisputedly a fiduciary.

1. The court of appeals concluded that the term "equitable relief" in ERISA Section 502(a)(3) categorically excludes monetary surcharge remedies. See Pet. App. 33a. That is incorrect. As this Court recognized in *CIGNA*, surcharge is a traditional form of equitable relief in suits against fiduciaries alleging breach of fiduciary duty. 563 U.S. at 442. Section 502(a)(3) is best read to incorporate that understanding.

a. Surcharge has a long historical pedigree as an equitable remedy for breach of fiduciary duty. In the days of the divided bench, subject to narrow exceptions not relevant here, equity courts exercised exclusive jurisdiction over claims by beneficiaries against trustees for breach of trust. See *Duvall* v. *Craig*, 15 U.S. (2 Wheat.) 45, 56 (1817) ("A trustee, merely as such, is, in general, only suable in equity."); *Manhattan Bank of Memphis* v. *Walker*, 130 U.S. 267, 271 (1889) ("The suit is plainly one of equitable cognizance, the bill being filed to charge the defendant, as a trustee, for a breach of trust."). Equity courts could remedy such breaches by ordering monetary payment, sometimes called a "surcharge." See, *e.g.*, *Princess Lida of Thurns & Taxis* v. *Thompson,* 305 U.S. 456, 458, 464 (1939) (describing au-

thority of Pennsylvania state court, in "suit in equity," "to surcharge [trustee] with losses incurred").

Surcharge had its roots in the traditional equitable remedy of "accounting for profits," which required the trustee to account for and give up any profits he had made that rightfully belonged to the trust itself. See Samuel L. Bray, *Fiduciary Remedies*, in *The Oxford Handbook of Fiduciary Law* 449 (Evan J. Criddle et al. eds., 2019). Surcharge "emerged" as a "shortcut." *Id.* at 457. Without conducting an accounting, a beneficiary could sue in equity "for what might be called the expected results on the negative side of the ledger." *Ibid.* This type of remedy became known as a "surcharge," because the trustee was "chargeable" for the recovery on top of the trust balance reflected in his accounting. See George Gleason Bogert et al., *Bogert's The Law of Trusts and Trustees* § 862 (May 2026 update) (explaining that a trustee may be ordered to pay "on an accounting where the trustee is surcharged beyond the amount of his admitted liability").

Although surcharge is a monetary remedy for a plaintiff's losses, it differs in several meaningful respects from the classic legal remedy of damages. First, surcharge is meant to make the *trust* (rather than the plaintiff) whole, so it "allows no recovery for nonpecuniary losses, such as emotional distress." Bray 457. Moreover, surcharge is a more forward-looking remedy than traditional monetary relief. For example, an equity court may calculate the plaintiff's loss as of the time of the court order, rather than the time of the breach, "on the theory that what the beneficiary is owed is a continuing obligation of prudent administration by the fiduciary." *Ibid.*; see, *e.g.*, *Melick* v. *Voorhees*, 24 N.J. Eq. 305, 308 (Ch. 1873), aff'd, 25 N.J. Eq. 523 (1874). Additionally,

because surcharge is an equitable remedy, the defendant may assert equitable defenses such as laches and unclean hands. See, *e.g.*, *McGrann* v. *Allen*, 140 A. 552 (Pa. 1928). Moreover, in some instances, courts may permit the trustee to offset his surcharge liability based on services he performed as fiduciary. See Bogert § 980; *In re McCalla's Est.*, 33 Pa. D. & C. 643, 660 (Orph. 1938).

b. Based on surcharge's unique nature and history, this Court in *CIGNA* correctly recognized that, in a suit against an ERISA fiduciary for breach of duty, "[t]he surcharge remedy" qualifies as "'equitable relief'" available under Section 502(a)(3). 563 U.S. at 442 (quoting 29 U.S.C. 1132(a)(3)).

This Court first addressed the scope of Section 502(a)(3) in *Mertens* v. *Hewitt Associates*, 508 U.S. 248 (1993). The *Mertens* Court held that "equitable relief" under Section 502(a)(3) is limited to forms of relief that were "*typically* available in equity" before law and equity merged. *Id.* at 256. Applying that standard, the Court held that Section 502(a)(3) does not authorize recovery of money damages from a nonfiduciary third party that has provided services to a plan, *id.* at 256-263, explaining that damages are "the classic form of *legal* relief," *id.* at 255.

The Court revisited the scope of Section 502(a)(3) in two subsequent suits against nonfiduciaries, *Great-West Life & Annuity Insurance Co.* v. *Knudson*, 534 U.S. 204 (2002), and *Sereboff* v. *Mid Atlantic Medical Services, Inc.*, 547 U.S. 356 (2006). Both cases involved restitution, and in both cases the Court reaffirmed that the determination whether that remedy "is legal or equitable depends on 'the basis for [the plaintiff's] claim' and the nature of the underlying remedies sought." *Sereboff*, 547 U.S. at 363 (quoting *Great-West*, 534 U.S. at 213).

In *CIGNA*, the Court addressed the availability of surcharge in "a suit by a beneficiary against a plan fiduciary." 563 U.S. at 439. The Court analyzed a district-court order that required fiduciaries to compensate participants for losses resulting from the fiduciaries' allegedly misleading statements. *Id.* at 432-433. The Court held that the ERISA provision on which the district court had relied (ERISA Section 502(a)(1)(B), 29 U.S.C. 1132(a)(1)(B)) did not authorize such relief, *CIGNA*, 563 U.S. at 435-438, but that a court could order the same relief in the form of a surcharge under Section 502(a)(3), *id.* at 438-442. In explaining why surcharge qualifies as "equitable relief," the Court discussed surcharge's history as an "exclusively equitable" remedy available against breaching trustees. *Id.* at 442 (citations omitted). The Court further explained that, while monetary make-whole relief had not been available in *Mertens*, "the fact that the defendant in [*CIGNA*], unlike the defendant in *Mertens*, is analogous to a trustee makes a critical difference." *Id.* at 442.

This Court has never disavowed *CIGNA*'s analysis of equitable surcharge. Although the Court in *Montanile* v. *Board of Trustees of the National Elevator Industry Health Benefit Plan*, 577 U.S. 136 (2016), stated that *CIGNA*'s discussion of Section 502(a)(3) "was not essential to resolving that case," it did not identify any substantive flaws in that discussion. *Id.* at 148 n.3. The *Montanile* Court rejected the argument that *CIGNA* had "all but overrul[ed]" *Mertens* and *Great-West*, stating that the "interpretation of 'equitable relief'" that the Court had adopted in those cases "remains unchanged." *Ibid.*

Whereas *Mertens* and *Great-West* involved monetary relief against nonfiduciaries, *CIGNA* was a suit

against a plan fiduciary. *CIGNA*, 563 U.S. at 439. The *CIGNA* Court emphasized that distinction. See *id.* at 442 ("[T]he fact that the defendant in this case, unlike the defendant in *Mertens*, is analogous to a trustee makes a critical difference."). The *Montanile* Court's reaffirmation of *Mertens* and *Great-West* therefore does not cast doubt on *CIGNA*'s conclusion that, in a suit against a fiduciary for breach of fiduciary duty, surcharge continues to "fall within the scope of the term 'appropriate equitable relief' in § 502(a)(3)." *Ibid.*

CIGNA's analysis of equitable surcharge adheres to this Court's traditional practice of applying "principles of trust law" in interpreting ERISA. *Firestone Tire & Rubber Co.* v. *Bruch*, 489 U.S. 101, 111 (1989); see *Varity Corp.* v. *Howe*, 516 U.S. 489, 497 (1996). And the *CIGNA* Court's interpretation of Section 502(a)(3) respects ERISA's structure and purpose. This Court has characterized Section 502(a)(3) as a "safety net" for redressing ERISA violations that other provisions "do[ ] not elsewhere adequately remedy." *Varity Corp.*, 516 U.S. at 512. A monetary surcharge remedy sometimes may be the only effective means to redress harms from a fiduciary breach. See *CIGNA*, 563 U.S. at 440. Permitting such relief under Section 502(a)(3) allows that provision to perform its "safety net" function.

c. The court of appeals held that the "equitable relief" authorized by Section 502(a)(3) can never include monetary surcharge. See Pet. App. 33a. The court's analysis reflected several errors.

To begin, the court of appeals treated *Montanile*'s footnote as a license to disregard this Court's thorough, reasoned discussion of surcharge in *CIGNA*. See Pet. App. 33a-34a, 37a. That was an overreading of *Montanile*. *Montanile* said only that *CIGNA*'s discussion of

Section 502(a)(3) was "not essential to resolving that case," not that *CIGNA*'s analysis was wrong. 577 U.S. at 148 n.3. And because *Montanile* did not involve a claim for surcharge or a suit against a fiduciary, any substantive discussion of those issues would itself have been dicta.

The court of appeals concluded that "surcharge and damages are 'essentially equivalent'" because both involve "'monetary relief'" that compensates "a plaintiff for the losses that the defendant caused." Pet. App. 35a (quoting *Rose* v. *PSA Airlines, Inc.*, 80 F.4th 488, 498 (4th Cir. 2023), cert. denied, 144 S. Ct. 1346 (2024)). That comparison overlooks important differences between the two remedies. As explained above, surcharge and damages cover different types of losses, can be calculated from different points in time, and are subject to different defenses. See pp. 10-11, *supra*.

The court of appeals also minimized surcharge's historical pedigree as an equitable remedy for breaches of fiduciary duty. See pp. 9-10, *supra*. Citing *Mertens*, the court construed Section 502(a)(3)'s reference to "equitable relief" as limited to remedies that could issue in equity when equity courts had "*concurrent* jurisdiction" with the courts of law over a particular cause of action. See Pet. App. 30a, 33a. *Mertens* does not say that. *Mertens* instructs that a fundamentally legal remedy does not qualify as "equitable relief" simply because it could have been awarded in pre-merger breach-of-trust cases subject to equity courts' exclusive jurisdiction. See *Mertens*, 508 U.S. at 255-258. The Court did not say that a remedy like surcharge against a fiduciary, which developed and existed *exclusively* in the courts of equity, should be treated as legal relief. Cf. *CIGNA*, 563 U.S. at 442.

2. Although the Sixth Circuit's analysis was flawed, this case's idiosyncratic factual context makes it an unsuitable vehicle for clarifying the propriety of surcharge relief under Section 502(a)(3).

As explained above, a top-hat plan is a type of unfunded employee benefit plan that is available only to select groups of high-level employees. See p. 4, *supra*. Congress exempted top-hat plans from various ERISA protections, on the theory that high-level employees have enough bargaining power to influence the terms of their plans. See U.S. Dep't of Labor Op. No. 90-14A. Most relevant for present purposes, top-hat plans are not subject to ERISA's requirements for fiduciaries. 29 U.S.C. 1101(a).

That unusual feature of top-hat plans bears directly on the surcharge issue in this case. Under *CIGNA*, the fiduciary status of the defendant "makes a critical difference" in determining whether surcharge is "'appropriate equitable relief'" under Section 502(a)(3). 563 U.S. at 442. Thus, in *CIGNA*, the Court concluded that plaintiffs could seek surcharge under Section 502(a)(3) in a suit "against a plan fiduciary (whom ERISA typically treats as a trustee) about the terms of a plan (which ERISA typically treats as a trust)." *Id.* at 439.

Here, by contrast, petitioners are not suing a "plan fiduciary" in the same sense, because top-hat plans are not subject to ERISA's fiduciary rules. See 29 U.S.C. 1101(a)(1). There is consequently reason to doubt that surcharge is available in this case under a faithful application of *CIGNA*. Cf. Br. in Opp. 23. Some district courts have concluded that, although ERISA authorizes surcharge relief in some circumstances, "surcharge is not an available remedy for 'top hat' ERISA plans." *Berland* v. *X Corp.*, No. 24-cv-7589, 2025 WL 1223547, at *4

(N.D. Cal. Apr. 28, 2025); see *Metaxas* v. *Gateway Bank, F.S.B.*, No. 20-cv-1184, 2024 WL 3488247, at *6-*7 (N.D. Cal. July 18, 2024) (rejecting claim for surcharge on this ground).

Petitioners contend that, although top-hat plans are exempted from ERISA's fiduciary rules, respondent is still a fiduciary in the sense that *CIGNA* makes relevant. See Cert. Reply Br. 5. In petitioners' view, a defendant's status as an ERISA fiduciary matters under *CIGNA* only because an ERISA fiduciary is "analogous to a trustee" sued in a pre-merger court of equity; and here, respondent actually is a trustee of the rabbi trust. *Ibid.* (emphasis omitted) (quoting *CIGNA*, 563 U.S. at 442). The court of appeals did not address that argument, however, because it viewed surcharge as categorically unavailable under Section 502(a)(3), regardless of the fiduciary status of the particular defendant involved. See Pet. App. 33a. The Court thus would need to grapple with that threshold fiduciary-status issue in the first instance in order to apply *CIGNA*'s analysis to petitioners' claims. Because surcharge disputes rarely arise in the top-hat-plan context, that threshold issue itself is not a question of broad continuing importance, and a decision applying Section 502(a)(3) to the top-hat plan here might not provide useful guidance to lower courts and litigants in more typical fact patterns.

3. Petitioners have correctly identified a circuit conflict concerning the availability under Section 502(a)(3) of surcharge *against ERISA fiduciaries*. But petitioners have not identified any court of appeals decision finding surcharge to be available against a rabbi-trust administrator like respondent. The absence of such a conflict further counsels against granting review in this case.

As the court below observed, the circuits are divided over whether "ERISA plan participants may seek this type of monetary award against ERISA fiduciaries under [29 U.S.C.] 1132(a)(3)." Pet. App. 33a. The majority of circuits to consider the issue have held that, under Section 502(a)(3), "equitable surcharge is a typical equitable remedy that may be imposed on a fiduciary for a breach of fiduciary duty." *Gimeno* v. *NCHMD, Inc.*, 38 F.4th 910, 915 (11th Cir. 2022); see *Sullivan-Mestecky* v. *Verizon Commc'ns Inc.*, 961 F.3d 91, 99 (2d Cir. 2020); *Kenseth* v. *Dean Health Plan, Inc.*, 722 F.3d 869, 876-879 (7th Cir. 2013); *Silva* v. *Metropolitan Life Ins. Co.*, 762 F.3d 711, 724 (8th Cir. 2014); *Gabriel* v. *Alaska Elec. Pension Fund*, 773 F.3d 945, 955 (9th Cir. 2014). Several of those decisions postdate *Montanile*. One of those decisions applied *CIGNA*'s analysis because the court found that analysis "'persuasive," even though the court recognized that *CIGNA*'s discussion of Section 502(a)(3) was "likely dicta." *Gimeno*, 38 F.4th at 915 (citation omitted); contra Br. in Opp. 20. A panel of the Fifth Circuit recently reached the same conclusion in *Aramark Services, Inc. Group Health Plan* v. *Aetna Life Insurance Co.*, 162 F.4th 532, 541-544 (2025), although that decision has been vacated and the case will be reheard en banc, see *Aramark Servs., Inc. Grp. Health Plan* v. *Aetna Life Ins. Co.*, 173 F.4th 744 (5th Cir. 2025) (per curiam).

Conversely, the Fourth Circuit and now the Sixth Circuit below have held that surcharge "is unavailable under § 502(a)(3)," regardless of a defendant's fiduciary status. *Rose*, 80 F.4th at 504; see Pet. App. 33a. Given that conflict, the Court may want to revisit the availability of surcharge against ERISA fiduciaries in a future case.

Petitioners do not identify any conflict on the availability of surcharge in a case involving a top-hat plan. And it is not clear that any court of appeals would reach a different conclusion from the Sixth Circuit on these facts. Several of the courts that have permitted plaintiffs to seek surcharge have reasoned that "a defendant's status as a fiduciary makes a 'critical difference' in the availability of monetary equitable relief." *Gimeno*, 38 F.4th at 915 (quoting *CIGNA*, 563 U.S. at 442); see *Aramark*, 162 F.4th at 543-544; cf. *Rose*, 80 F.4th at 507 (Heytens, J., concurring in part and dissenting in part). It is uncertain whether those courts would consider a rabbi-trust administrator to be a fiduciary in the relevant sense under *CIGNA*. Cf. *Goldstein* v. *Johnson & Johnson*, 251 F.3d 433, 443 (3d Cir. 2001) (rejecting the argument that "administrators of top-hat plans are also fiduciaries"). Indeed, as noted above, several district courts have determined that surcharge is not available under Section 502(a)(3) to enforce top-hat plans. See *Metaxas*, 2024 WL 3488247, at *6-*7; cf. *Berland*, 2025 WL 1223547, at *4; *Kurisu* v. *Svenhard Swedish Bakery Supplemental Key Mgmt. Ret. Plan*, No. 20-cv-06409, 2021 WL 3271252, at *10 (N.D. Cal. July 30, 2021).

The specific question whether surcharge is an available remedy in a suit against a rabbi-trust administrator does not warrant this Court's review. No circuit conflict exists on that question, and the surcharge issue appears to have rarely arisen in the context of top-hat plans. Although this Court may wish to address the propriety of surcharge under Section 502(a)(3), it should await a case that presents the issue in a more typical factual context.

B. The Court Of Appeals' Preemption Holding Does Not Warrant This Court's Review

Petitioners also challenge (Pet. i, 14) the court of appeals' holding that ERISA expressly preempts their state-law claims. The court's preemption holding is correct and does not warrant further review.

1. Subject to certain exceptions that are not relevant here, ERISA expressly preempts "any and all State laws insofar as they may now or hereafter relate to any employee benefit plan." 29 U.S.C. 1144(a). Giving that language its "broad common-sense meaning," this Court has held that a state law "'relates to'" an employee benefit plan "'if it has a connection with or reference to such a plan.'" *Metropolitan Life Ins. Co.* v. *Massachusetts*, 471 U.S. 724, 739 (1985) (quoting *Shaw* v. *Delta Air Lines*, 463 U.S. 85, 97 (1983)).

In *Pilot Life Ins. Co.* v. *Dedeaux*, 481 U.S. 41 (1987), this Court concluded that "state common law causes of action" for benefits owed under an ERISA plan satisfy that test and thus "fall under ERISA's express preemption clause." *Id.* at 47-48. The Court further explained that Congress's careful selection of specific remedies in ERISA Section 502(a) "strongly" indicates "that ERISA's civil enforcement remedies were intended to be exclusive." *Id.* at 54. Thus, "any state-law cause of action that duplicates, supplements, or supplants the ERISA civil enforcement remedy conflicts with the clear congressional intent to make the ERISA remedy exclusive and is therefore pre-empted." *Aetna Health Inc.* v. *Davila*, 542 U.S. 200, 209 (2004).

The court of appeals correctly applied those principles in this case. Petitioners' state-law causes of action seek the benefits owed to them under the terms of the plans and the trust. See Pet. App. 22a, 25a; p. 6, *supra*.

These claims at least have a "connection with" employee benefit plans, as they "touch matters that ERISA already covers." *Id.* at 16a-17a; see *Pilot Life*, 481 U.S. at 47. Moreover, ERISA supplies a specific cause of action to a plan participant "to recover benefits due to him under the terms of his plan" or "to enforce his rights under the terms of the plan." 29 U.S.C. 1132(a)(1)(B). Permitting petitioners to pursue "alternative enforcement mechanisms" under state law thus "would undermine Congress's policy choices to include only certain remedies in" Section 502(a). Pet. App. 22a (brackets, citation, and internal quotation marks omitted); see *Pilot Life*, 481 U.S. at 54.

2. Petitioners do not contest that reasoning. Instead, they argue that, if their ERISA claim for surcharge cannot go forward, preemption of their alternative state-law remedy would be a "jarring result." Pet. 5. But this Court rejected substantially the same argument in *Pilot Life*, explaining that Congress's decision *not* to provide a particular remedy in ERISA carries as much preemptive force as a decision to provide that remedy. See 481 U.S. at 54 (plaintiffs may not "obtain remedies under state law that Congress rejected in ERISA").

Petitioners also raise (Pet. 31-32) a related argument that is specific to top-hat plans. They contend that ERISA's top-hat-plan exemption from ERISA fiduciary rules reflects Congress's view that high-level employees have sufficient bargaining power to influence their plans, and that participants' exercise of such influence would be substantially negated if the bargained-for terms could not be enforced through state-law breach-of-contract actions. Petitioners are wrong, however, in suggesting that preemption of state-law claims

would leave top-hat plan participants without a remedy, since ERISA Section 502(a)(1)(B) supplies a cause of action for plan participants to enforce the terms of their plans. See Pet. App. 24a-25a; 29 U.S.C. 1132(a)(1)(B) (authorizing a participant to sue "to recover benefits due to him under the terms of his plan" or "to enforce his rights under the terms of his plan").

In this case, petitioners tried to raise a Section 502(a)(1)(B) claim against Ruby Tuesday in the bankruptcy proceedings, but those proceedings ultimately resulted in a settlement. See D. Ct. Doc. 61-39, at 19 (Feb. 16, 2024). Petitioners contended below that the Section 502(a)(1)(B) cause of action does not fit their current claims because they are seeking to enforce the terms of the rabbi trust rather than the terms of the plan. See Pet. App. 25a. But accepting that premise would presumably doom petitioners' Section 502(a)(3) claims as well, since relief under that provision is also limited to violations of ERISA itself "or the terms of the plan." 29 U.S.C. 1132(a)(3); see Pet. App. 32a (declining to address that issue). And the overlap between these claims and the settled bankruptcy claims further highlights the atypical nature of this case. See p. 15, *supra*.

3. Petitioners do not identify a conflict between the court of appeals' preemption ruling and any decision of this Court or another court of appeals. Their case-specific disagreement with the preemption holding below does not warrant this Court's review. See Sup. Ct. R. 10 ("A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.").

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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