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By ECF

The Honorable Laura M. Provinzino
U.S. District Court Judge
U.S. District Court for the District of Minnesota
316 N. Robert Street
St. Paul, MN 55101
provinzino_chambers@mnd.uscourts.gov

Re: *Navarro, et al. v. Wells Fargo & Company, et al.*,
Case No. 0:24-cv-03043-LMP-DTS

Dear Judge Provinzino:

We are counsel to Defendant Wells Fargo & Company in the above-referenced action. With the Court's permission (obtained earlier today), we write to respond to the notice of supplemental authority submitted by Plaintiffs concerning *Duke v. Luxottica U.S. Holdings Corp.*, 2024 WL 4904509 (S.D.N.Y. Nov. 27, 2024). See ECF No. 47.¹

In *Duke v. Luxottica*, the plaintiff alleged a violation of certain ERISA statutory provisions that caused a miscalculation of her benefits. Although monetary relief was demanded on behalf of the plan, that relief would necessarily be applied to recalculate plaintiff's benefits. In fact, in the key phrase that Plaintiffs omit from the paragraph they quote, the court stated that "the Complaint presents well-pled allegations that Duke's monthly benefit payments will increase if Defendants are prohibited from applying a mortality table that is 'fifty years out of date' and a 7% interest rate to calculate joint and survivor annuities for Duke and many others." *Duke*, 2024 WL 4904509, at *8 (emphasis added in underline). Under those circumstances, the court readily concluded that plaintiff had satisfied Article III's harm and redressability requirements.

Here, by contrast, for the reasons stated in Wells Fargo's Motion to Dismiss, Plaintiffs fail to plausibly connect their alleged *personal harm*, which they contend took the form of higher premiums and greater out-of-pocket costs, to their claim that the *Plan overpaid* for prescription drugs and fees charged by its pharmacy benefits manager; nor do they plausibly allege that recovery by the Plan will reduce their premiums and out-of-pocket costs. (ECF No. 41 at 2-8;

¹ The *Duke v. Luxottica* opinion was published nearly three weeks prior to the December 17 hearing on Defendant's Motion to Dismiss in this action.



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ECF No. 30 at 10-14.) There is no amendment or other relief that can cure this jurisdictional deficiency.

We thank the Court for its consideration of this submission.

Respectfully submitted,

/s/ Russell L. Hirschhorn

Russell L. Hirschhorn

cc All counsel of record