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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, we write to submit this notice of supplemental authority concerning *Lewandowski v. Johnson and Johnson*, Case No. 3:24-cv-671, ECF No. 70 (D.N.J. Jan. 24, 2025). A copy of the *Lewandowski* Opinion is attached hereto.

The *Lewandowski* action was commenced by the same plaintiffs' counsel that commenced the *Navarro* action pending before Your Honor. Like *Navarro*, in *Lewandowski*, a participant in the Johnson and Johnson medical plans alleged that defendants violated ERISA by mismanaging Johnson and Johnson's prescription-drug benefits program, which cost their ERISA plans and participants millions of dollars in the form of higher premiums and payments for prescription drugs. *Id.* at 2. The *Lewandowski* court held that plaintiff lacked Article III standing to assert her claims. The court first dismissed plaintiff's claim related to higher premium payments because "[s]uch an injury, at best, is speculative and hypothetical." *Id.* at 8 (citing *Knudsen v. MetLife Grp., Inc.*, 117 F.4th 570 (3d Cir. 2024)). In so ruling, the court explained that the "outcome of the suit would not affect plaintiff's future benefit payments," i.e., "the allegations of higher premiums are speculative and stand on nothing more than supposition." *Id.* at 9 (cleaned up). Next, the court dismissed plaintiff's claim that she paid higher prices for certain drugs, concluding that the alleged harm was not redressable because she already had reached her annual out-of-pocket cap for expenditures.

The *Lewandowski* Opinion is directly on point and provides additional support for granting Wells Fargo's Motion to Dismiss in the *Navarro* action (ECF No. 28). Here, Plaintiffs also claim to have suffered personal injury in the form of higher monthly premiums for healthcare coverage and greater out-of-pocket costs for certain prescription drugs. As Wells



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Fargo explained in its Motion to Dismiss, any claim of increased costs incurred indirectly as a result of the allegedly excessive costs borne by the plan is too speculative to satisfy Article III's concrete injury requirement, and any alleged injury is not redressable by an order from this Court because Plaintiffs failed to plausibly allege that recovery by the plan will reduce their premiums *and* out-of-pocket costs. (ECF No. 30 at 9-10, 12-14 & n.6, 17-19; ECF No. 41 at 2-6.) Furthermore, Plaintiffs lack standing because any increased costs that they allegedly incurred directly for specific prescription drugs or plan contributions are not attributable to fiduciary decisions, but rather settlor decisions regarding plan design. (ECF No. 30 at 9-10, 15-17; ECF No. 41 at 7-8.)¹

We thank the Court for its consideration of this submission.

Respectfully submitted,

/s/ Russell L. Hirschhorn

Russell L. Hirschhorn

Enclosure

cc All counsel of record

¹ For all of these reasons, it is irrelevant whether plaintiffs reached their annual out-of-pocket cap for expenditures.