No. _____

IN THE

Supreme Court of the United States

PRICEWATERHOUSECOOPERS LLP,
THE RETIREMENT BENEFIT ACCUMULATION PLAN
FOR EMPLOYEES OF PRICEWATERHOUSECOOPERS LLP,
AND THE ADMINISTRATIVE COMMITTEE TO THE
RETIREMENT BENEFIT ACCUMULATION PLAN FOR
EMPLOYEES OF PRICEWATERHOUSECOOPERS LLP,

Petitioners,

v.

TIMOTHY D. LAURENT AND SMEETA SHARON,
ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY
SITUATED

Respondents.

**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Second Circuit**

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Section 502(a) of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1132(a), includes 11 paragraphs, each authorizing particular types of plaintiffs to pursue distinct types of relief. Section 502(a)(1)(B) permits courts to enforce employee-benefit plan terms only "as written." *CIGNA Corp.* v. *Amara*, 563 U.S. 421, 436 (2011). Section 502(a)(3) permits only the equitable remedies "typically available in premerger equity courts," *Montanile* v. *Bd. of Trs. of Nat. Elevator Indus. Health Benefit Plan*, 136 S. Ct. 651, 657 (2016), and an action to "impose personal liability … for a contractual obligation to pay money" is "relief that was not typically available in equity," *Great-West Life & Annuity Ins. Co.* v. *Knudson*, 534 U.S. 204, 210 (2002).

In this case, the Second Circuit recognized that plaintiffs, a class of former plan participants, were not entitled to additional benefits under the plan as written. Nevertheless, in conflict with at least five other circuits, the Second Circuit held that the district court could use the equitable authority of § 502(a)(3) to reform plan terms as a purported "*preparatory step*" to enforcing the reformed plan under § 502(a)(1)(B). By combining parts of each of the two distinct remedial provisions in this fashion, the Second Circuit authorized an award of monetary damages that is not permitted by either provision individually.

The question presented is:

Whether the Second Circuit improperly combined parts of two separate remedial sections under ERISA, interpreting § 502(a)(3) to permit reformation of a plan solely as a preparatory step to ultimate relief under § 502(a)(1)(B) in the form of money damages.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

All parties to the proceeding in this Court are named in the caption.

Michael A. Weil was a plaintiff in the district court but did not participate in the case in the court of appeals.

Neither PricewaterhouseCoopers LLP, The Retirement Benefit Accumulation Plan for Employees of PricewaterhouseCoopers LLP, nor The Administrative Committee to the Retirement Benefit Accumulation Plan for Employees of PricewaterhouseCoopers LLP (which is no longer in existence) has any parent corporation, and no publicly held corporation owns 10 percent or more of any of their stock.

STATEMENT OF RELATED PROCEEDINGS

The proceedings directly related to this petition are:

Laurent v. *PricewaterhouseCoopers LLP*, No. 18-487, 945 F.3d 739 (2d Cir. Dec. 23, 2019), *reh'g denied*, Order at 1 (2d Cir. Feb. 12, 2020);

Laurent v. *PricewaterhouseCoopers LLP*, No. 1:06-cv-02280-JPO, 2017 WL 3142067 (S.D.N.Y. July 24, 2017), *motion for reconsideration denied*, 2018 WL 502239 (S.D.N.Y. Jan. 19, 2018), *motion for clarification or modification denied*, 2018 WL 1940431 (S.D.N.Y. Apr. 24, 2018);

PricewaterhouseCoopers LLP, et al. v. *Timothy D. Laurent, et al.*, No. 15-638 (U.S. cert. denied Jan. 25, 2016);

Laurent v. *PricewaterhouseCoopers LLP*, No. 14-1179, 794 F.3d 272 (2d Cir. July 23, 2015); and

Laurent v. *PricewaterhouseCoopers LLP*, No. 1:06-cv-02280-JPO, 963 F. Supp. 2d 310 (S.D.N.Y. Aug. 8, 2015).

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PETITION FOR A WRIT OF CERTIORARI

Petitioners PricewaterhouseCoopers LLP ("PwC"), The Retirement Benefit Accumulation Plan for Employees of PricewaterhouseCoopers LLP, and The Administrative Committee to the Retirement Benefit Accumulation Plan for Employees of PricewaterhouseCoopers LLP respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit.

OPINIONS BELOW

The relevant opinion of the Second Circuit (Pet. App. 1a-19a) is reported at 945 F.3d 739. The Second Circuit's order denying rehearing (Pet. App. 56a-57a) is unreported. The relevant opinions of the district court (Pet. App. 20a-42a, 43a-50a, 51a-55a) are unreported but available at 2017 WL 3142067, 2018 WL 502239, and 2018 WL 1940431.

JURISDICTION

The Second Circuit entered judgment on December 23, 2019, and denied a timely petition for rehearing on February 12, 2020. On March 19, 2020, this Court issued a standing order extending the time for filing a petition for a writ of certiorari to and including July 11, 2020. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Section 502(a) of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1132(a), provides, in relevant part:

(a) Persons empowered to bring a civil action

> A civil action may be brought--
>
> (1) by a participant or beneficiary--
>
> > * * *
> >
> > (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;
>
> * * *
>
> (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 ….

STATEMENT

This case presents an important question about the remedies available under ERISA's "carefully crafted and detailed enforcement scheme." *Mertens* v. *Hewitt Assocs.*, 508 U.S. 248, 254 (1993). The Second Circuit distorted that scheme by sustaining a single cause of action through a rationale that employs parts of two separate remedial sections of ERISA's civil enforcement provision, 29 U.S.C. § 1132 ("§ 502"), while disregarding the statutory limits Congress wrote into each such section. The ensuing hybrid remedy is one that Congress did not enact, that this Court has never adopted, and that numerous other courts of appeals have explicitly rejected.

Specifically, the Second Circuit authorized a two-step remedy for an alleged ERISA violation by

permitting judicial reformation of a benefit plan under § 502(a)(3), followed—as part of the same claim for relief—by enforcement of the reformed terms under § 502(a)(1)(B). Thus, the court allowed a class of plaintiffs who already received their full benefits to invoke "equity" to alter the terms of the plan solely to provide plaintiffs with a platform to recover under § 502(a)(1)(B) additional money not available according to the plan as written. The result of this hybrid "reform-and-enforce remedy" would be a monetary windfall to the former members of PwC's plan who comprise the plaintiff class, a windfall that could exceed $2 billion if plaintiffs' preferred terms were to be written into the plan.

The Second Circuit's interpretation of § 502(a)(3) and § 502(a)(1)(B) contravenes this Court's precedents defining the proper scope of those provisions and conflicts with decisions of other courts of appeals. Left undisturbed, the Second Circuit's holdings will undermine ERISA's uniform, nationwide remedial scheme. This Court should grant review to restore the careful balance that Congress provided in ERISA's enforcement scheme.

1. "ERISA is a comprehensive and reticulated statute, the product of a decade of congressional study of the Nation's private employee benefit system." *Great-West Life & Annuity Ins. Co.* v. *Knudson*, 534 U.S. 204, 209 (2002) (quotation marks omitted). In particular, "the detailed provisions of § 502(a) set forth a comprehensive civil enforcement scheme that represents a careful balancing of the need for prompt and fair claims settlement procedures against the public interest in encouraging the formation of employee benefit plans." *Pilot Life Ins. Co.* v. *Dedeaux*, 481 U.S. 41, 54 (1987).

This Court has "therefore been especially reluctant to tamper with [the] enforcement scheme embodied in the statute by extending remedies not specifically authorized by its text." *Great-West*, 534 U.S. at 209 (alteration in original; quotation marks omitted). ERISA's "carefully crafted and detailed enforcement scheme provides strong evidence that Congress did *not* intend to authorize other remedies that it simply forgot to incorporate expressly." *Mertens*, 508 U.S. at 254 (quotation marks omitted); *see also Pilot Life*, 481 U.S. at 54 ("The deliberate care with which ERISA's civil enforcement remedies were drafted and the balancing of policies embodied in its choice of remedies argue strongly for the conclusion that ERISA's civil enforcement remedies were intended to be exclusive.").

Section 502(a), 29 U.S.C. § 1132(a), originally included six "carefully integrated civil enforcement provisions." *Mass. Mut. Life Ins. Co.* v. *Russell*, 473 U.S. 134, 146 (1985). It now includes 11 separate paragraphs, each authorizing a distinct cause of action for specified groups of plaintiffs. Two of § 502(a)'s provisions are relevant here.

Section 502(a)(1)(B) authorizes suits by "a participant or beneficiary … 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) (emphases added). This "provision allows a court to look outside the plan's written language in deciding what those terms *are*, *i.e.*, what the language means." *CIGNA Corp.* v. *Amara*, 563 U.S. 421, 436 (2011). But it does not "authorize[ ] a court to alter those terms." *Id.* In short, § 502(a)(1)(B) allows courts to enforce the terms of an ERISA plan

only "as written." *Id.*; *see also Heimeshoff* v. *Hartford Life & Accident Ins. Co.*, 571 U.S. 99, 108 (2013) ("[W]e have recognized the particular importance of enforcing plan terms as written in § 502(a)(1)(B) claims.").

Section 502(a)(3), by contrast, authorizes suits by participants "to obtain other appropriate equitable relief … to redress [ERISA] violations or … to enforce … the terms of the plan." 29 U.S.C. § 1132(a)(3). This Court has "explain[ed] that the term 'equitable relief' in § 502(a)(3) is limited to 'those categories of relief that were *typically* available in equity' during the days of the divided bench (meaning, the period before 1938 when courts of law and equity were separate)." *Montanile* v. *Bd. of Trustees of Nat'l Elevator Indus. Health Benefit Plan*, 136 S. Ct. 651, 657 (2016) (quoting *Mertens*, 508 U.S. at 256). "To determine how to characterize the basis of a plaintiff's claim and the nature of the remedies sought," the Court "turn[s] to standard treatises on equity, which establish the 'basic contours' of what equitable relief was typically available in premerger equity courts." *Id.*

As a result of ERISA's comprehensive and reticulated enforcement scheme, some plaintiffs may be "deprived of any remedy under circumstances where such a result clearly would be inconsistent with a primary purpose of ERISA." *Great-West*, 534 U.S. at 220. But this Court has consistently "rejected" arguments that it should expand the remedies Congress enacted to promote "[v]ague notions of [the] statute's 'basic purpose.'" *Montanile*, 136 S. Ct. at 661.

2. This case concerns a retirement plan (the "Plan") that PwC offered its partners and employees (collectively, "participants"). Pet. App. 61a. ERISA

recognizes two types of retirement plans. One type is a defined-contribution plan, in which each participant has an actual individual account into which contributions are made periodically and invested. Those contributions, and any gains or losses in the value of participants' investments, determine the benefits participants eventually receive. 29 U.S.C. § 1002(34). The second type is a defined-benefit plan, in which participants are *guaranteed* a certain level of benefits (their "accrued benefit[s]"). *Id.* § 1002(23)(A). How benefits are distributed varies, but a participant's "accrued benefit" in a defined-benefit plan is "expressed in the form of an annual benefit commencing at normal retirement age." *Id.*

PwC's Plan is a defined-benefit cash-balance plan. *See Laurent* v. *PricewaterhouseCoopers LLP*, 794 F.3d 272, 276 (2d Cir. 2015). In a cash-balance plan, the employer maintains a single pool of plan assets, with each participant having a hypothetical or notional account tracking the value of each participant's accrued benefits. *Id.* at 274-75. In PwC's Plan, PwC periodically provided participants with "pay credits" to their respective accounts in an amount equal to a percentage of their compensation. Pet. App. 63a. Participants allocated their notional account balances among numerous investment options. *Id.* at 63a-64a. While in the Plan, the value of each participant's notional account fluctuated daily based on the market performance of those investments. *Id.* at 63a.

At all relevant times, PwC's Plan gave vested participants who left PwC the option either to keep their accrued benefits invested in the Plan—where they could continue to increase or decrease based on market performance—or to withdraw their funds, including by taking a lump-sum payment. Pet. App.

76a-82a, 89a-98a. Participants who elected to take immediate lump-sum payments received the full amount of their notional account balances on the date of election. *See id.* at 78a-79a.

Before 2006, in the case of participants who elected to take a lump-sum payment before attaining the Plan's normal retirement age, the Second Circuit construed ERISA to require that the amount of the lump sum be calculated by valuing the participant's account balance as of the future date on which the participant would attain normal retirement age and then discounting that amount back to present value. Pet. App. 5a. This method of projecting an account balance forward and discounting back was known as a "whipsaw calculation." *Id.* Where the Plan's terms required a whipsaw calculation for any participant departing from PwC's Plan, they called for using the same 30-year Treasury securities rate both to project the participant's account balance to "normal retirement age" and to discount that amount to present value. *Id.* at 89a, 96a-97a. Thus, under PwC's Plan, the whipsaw calculation always would result in a lump-sum payment equal to a participant's notional account balance at the time of distribution.

In practice, PwC did not perform a whipsaw calculation for most departing participants in the Plan who elected to receive a lump-sum distribution. Section 3(24)(A) of ERISA expressly permits a plan to determine the "normal retirement age" used to calculate certain aspects of participants' benefits, defining "normal retirement age" in relevant part as "the time a plan participant attains normal retirement age *under the plan*." 29 U.S.C. § 1002(24)(A) (emphasis added). PwC's Plan provided that participants' benefits would vest and they would

attain "normal retirement age" simultaneously, at the earlier of attaining age 65 or after five years of service at PwC. Pet. App. 6a. Thus, under PwC's Plan, projecting a vested participant's notional account balance forward to "normal retirement age" typically was unnecessary because, except in rare instances, a vested participant had *already* attained the Plan's definition of "normal retirement age."

Congress amended ERISA in the Pension Protection Act of 2006 to clarify that cash-balance plans are not required to perform whipsaw calculations or pay "future interest credits" to plan participants who elect lump-sum distributions of their account balances before reaching "normal retirement age." Pub. L. No. 109-280, 120 Stat. 780, § 701(a)(2). The current version of ERISA thus expressly permits PwC to pay pre-"normal retirement age" lump sums in an amount equal to a participant's notional account balance—just as the Plan always provided.

In 1996 and again in 2004, the Internal Revenue Service approved the Plan as tax-qualified under 26 U.S.C. § 401(a). Pet. App. 83a-85a, 86a-88a. That approval required numerous findings, including that the Plan "satisfie[d] the requirements of [26 U.S.C. §] 411 (relating to [ERISA's] minimum vesting standards)." 26 U.S.C. § 401(a)(7) (2012). Subsequently, the IRS audited the Plan and, in 2014, issued a Technical Advice Memorandum to PwC. Pet. App. 99a. The IRS found that the PwC Plan design violated ERISA by virtue of a structural "mismatch" between the manner in which account balances were adjusted while participants were in the Plan and the manner in which the Plan valued their accounts as of normal retirement age. *Id.* at 109a-111a. However, in light of the IRS's two prior approvals of the Plan

and PwC's reliance on those approvals in "good faith," the IRS declined to impose any penalty on PwC for the structural mismatch in Plan design, concluding that "[r]etroactive application of the conclusions reached in [the Technical Advice Memorandum] would be detrimental to the Plan, the Plan sponsor and the Plan Participants." *Id.* at 112a.

3. Respondents represent a class of former Plan participants who left PwC before August 2006 and took lump-sum payments. Pet. App. 3a, 21a. Respondents sued PwC, the Plan, and the Administrative Committee to the Plan. *Id.* at 20a. They allege that PwC wrongfully "did not disregard the terms of the Plan"—that is, that PwC wrongfully *followed* the Plan as written—in calculating their lump-sum payments, and so caused an "unlawful forfeiture[ ]" under ERISA. *Id.* at 68a. Respondents contend that the Plan's definition of "normal retirement age" violates ERISA because five years of service is not a "normal retirement age" within the meaning of the statute. *Id.* at 74a. They also contend that the Plan's use of the 30-year Treasury securities rate as the projection rate for the whipsaw calculation was improper because it undervalues future investment experience that they allegedly would have achieved had they remained in the Plan. *Id.* at 68a-73a.

In a prior appeal in this case, the Second Circuit, in acknowledged conflict with decisions of two other courts of appeals, agreed with Respondents that the Plan's definition of "normal retirement age" violates ERISA. Although the IRS twice approved the plan as satisfying ERISA's minimum vesting requirements, the court of appeals held that ERISA imposes an unwritten limitation on the "normal retirement age" a

plan may prescribe, and forbids a plan from establishing a "normal retirement age" that does not bear a "reasonable relation" to the "typical" age at which the employer, "under normal circumstances," would "reasonably expect its employees to retire" from working. *Laurent*, 794 F.3d at 281-82, 284. In contrast, both the Fourth and Seventh Circuits have upheld definitions of "normal retirement age" that are indistinguishable from PwC's. *McCorkle* v. *Bank of Am. Corp.*, 688 F.3d 164 (4th Cir. 2012), *cert. denied*, 133 S. Ct. 1253 (2013); *Fry* v. *Exelon Corp. Cash Balance Pension Plan*, 571 F.3d 644 (7th Cir. 2009) (Easterbrook, C.J.). This Court denied PwC's petition for certiorari. *PricewaterhouseCoopers LLP* v. *Laurent*, 136 S. Ct. 981 (2016).

Following this Court's denial of review, PwC timely moved for judgment on the pleadings under Federal Rule of Civil Procedure 12(c). Pet. App. 8a. PwC argued that even assuming *arguendo* that the Plan's definition of "normal retirement age" and the Plan's stated projection rate were unlawful, neither § 502(a)(1)(B) nor § 502(a)(3) provides plaintiffs the remedy of recalculated benefits under revised plan terms. *Id.* at 6a, 8a. The district court agreed and granted judgment for PwC. *See id.* at 41a. The court first concluded that § 502(a)(1)(B) did not provide plaintiffs a remedy because the Plan clearly disclosed the whipsaw methodology, and § 502(a)(1)(B) does not authorize a court to alter a plan's unambiguous terms. *Id.* at 28a-35a. The court also concluded that § 502(a)(3) did not provide them a remedy because "the equitable remedy of reformation is available in cases of fraud and mutual mistake—neither of which is at issue here." *Id.* at 37a. Moreover, the court noted that "§ 502(a)(3) authorizes only 'those categories of relief that were *typically* available in equity,'" and

thus does not allow relief in this case because Respondents seek "declarations" that "if granted" would result in *legal relief only*—that is, an "award of money damages for benefits that were allegedly underpaid by PwC." *Id.* at 39a-40a. The district court subsequently denied Respondents' motions for reconsideration and for clarification or modification of the judgment. *Id.* at 50a, 55a.

4. On appeal, Respondents argued for a *hybrid* two-step remedy under which the court would first "reform" the Plan under § 502(a)(3) to bring it into compliance with the pre-2006 version of ERISA as construed by the Second Circuit (by re-writing the Plan's normal-retirement-age and projection-rate terms), and then would grant the relief ultimately sought under § 502(a)(1)(B) by ordering PwC to re-calculate and pay benefits to Respondents according to the reformed Plan.

The Secretary of Labor filed an *amicus* brief that supported reversal under either § 502(a)(1)(B) *or* § 502(a)(3). In the Secretary's view, the district court could award a remedy under § 502(a)(1)(B), notwithstanding *Amara*, by "interpreting" the plan to "incorporate" ERISA's requirements and "override" any contrary contract terms. Br. for U.S. Sec'y of Labor as *Amicus Curiae* Supporting Plaintiff-Appellants 6, 9, 14, *Laurent* v. *PricewaterhouseCoopers LLP*, 945 F.3d 739 (2d Cir. 2019) (No. 18-487). "In the alternative," the Secretary argued, the court could apply § 502(a)(3) by declaring any illegal Plan terms "void" and issuing an "affirmative injunction ordering PwC to enforce the Plan in compliance with ERISA's requirements." *Id.* at 17, 20 (capitalization omitted). Or the court could deem the "systemic mis-adjudication of benefits" as a

breach of fiduciary duty for which relief is appropriate under § 502(a)(3). *Id.* at 23. The Secretary did *not*, however, endorse a hybrid remedy that combined both § 502(a)(1)(B) and § 502(a)(3).

In a precedential opinion, the Second Circuit vacated the judgment in favor of PwC and remanded for further proceedings. Pet. App. 19a. The panel recognized that neither § 502(a)(1)(B) nor § 502(a)(3) separately authorizes the relief Respondents seek—thus rejecting the arguments advanced by the Secretary as *amicus*. *See id.* at 14a-19a. The panel noted that the Second Circuit had never previously "consider[ed] the availability of reformation to plaintiffs in circumstances such as these, where the written terms of a pension plan indisputably violate ERISA, but there is *no allegation* that the violation stems from traditional fraud, mistake, or otherwise inequitable conduct." *Id.* at 14a-15a (emphasis added). And the panel acknowledged that PwC presented "controlling cases that limit the remedies available under both § 502(a)(3) and § 502(a)(1)(B) independently." *Id.* at 18a-19a. Nevertheless, the panel disregarded those "controlling cases" because "none of [them] consider[ed] the two provisions *simultaneously*." *Id.* (emphasis added). Adopting Respondents' hybrid approach, the panel "conclude[d] that reformation of the Plan was available here under ERISA § 502(a)(3)," and that "the district court was then authorized to enforce the reformed Plan as a second step under § 502(a)(1)(B)." *Id.* at 14a-15a.

Additionally, the panel rejected the proposition that relief under § 502(a)(3) is limited "to the specific *circumstances* under which [equitable] remedies were typically available in equity courts." Pet. App. 15a (emphasis added). Instead, it held that "[r]eformation

is indisputably a typical and traditional *form* of equitable relief, and is thus *categorically* available to a participant or beneficiary to enforce violated provisions of ERISA." *Id.* at 16a (emphases added; citations omitted). And the panel justified its ruling by reasoning that denying Respondents a remedy even if they proved an ERISA violation was "inconsistent with the maxim of equity … that equity suffers not a right to be without a remedy." *Id.* at 16a-17a (punctuation omitted; omission in original). The panel ignored PwC's argument that the "equitable" component of the relief sought by plaintiffs would not avert any present or threatened injury to anyone, but would serve only as a predicate for a retrospective award of compensatory damages to former Plan members, which is manifestly impermissible under § 502(a)(3), the provision that ostensibly "authorizes" reformation.

The panel acknowledged that the Third Circuit "rejected" this very type of "two-step remedy" in *Eichorn* v. *AT&T Corp.*, 484 F.3d 644 (3d Cir. 2007). Pet. App. 18a. But "[i]n the absence of controlling authority otherwise," the panel decided "to follow" what it deemed "the Supreme Court's express preference that violations of ERISA should be remedied." *Id.* at 19a.

On February 12, 2020, the Second Circuit denied rehearing and rehearing en banc. Pet. App. 57a.

REASONS FOR GRANTING THE PETITION

The Second Circuit held that a former version of PwC's Plan must be equitably reformed under § 502(a)(3) to conform to ERISA as a preparatory step to awarding contractual money damages to former plan participants pursuant to § 502(a)(1)(B). Neither

§ 502(a)(1)(B) nor § 502(a)(3), separately or together, provides a remedy to this class of plaintiffs.

Section 502(a)(1)(B) allows courts to enforce a plan only "as written," *Amara*, 563 U.S. at 436, and what Respondents received was exactly what was written in PwC's plan. *Amara* holds that § 502(a)(1)(B) never allows courts to change plan terms "akin to the reform of a contract." *Id.* To circumvent this limitation, the Second Circuit directed the district court, assuming there is an ERISA violation, first to reform PwC's Plan under § 502(a)(3) and then to enforce the Plan as purportedly "reformed" under § 502(a)(1)(B). Other courts of appeals have rightly rejected that "bootstrap approach." *Eichorn*, 484 F.3d at 653. Congress deliberately chose to separate each of § 502(a)'s remedial provisions with the disjunctive word "or," thereby preventing courts from creating ad hoc remedies by applying the favorable parts from multiple different provisions of § 502(a) while ignoring the unfavorable parts. *See infra* at 22.

Nor does § 502(a)(3) provide a remedy. That provision does not authorize courts to "impose personal liability … for a contractual obligation to pay money" because such relief "was not typically available in equity." *Great-West*, 534 U.S. at 210. In any event, reformation must satisfy "the conditions that equity attached to its provision," *id.* at 216—as a remedy "'chiefly occasioned by fraud or mistake,'" *Amara*, 563 U.S. at 440-41 (citation omitted). Respondents have not alleged fraud or mistake here.

The Second Circuit's holdings conflict with this Court's precedent and the position of numerous federal courts of appeals. They undermine the single, uniform set of remedies that Congress established

under ERISA. And they will invite forum shopping by making available to plaintiffs in the Second Circuit remedies not permitted in other courts. This Court should grant certiorari to restore needed clarity and uniformity to this important area of law.

I. THE SECOND CIRCUIT'S HOLDING PERMITTING ENFORCEMENT OF A REFORMED PLAN UNDER § 502(a)(1)(B) CONFLICTS WITH THIS COURT'S PRECEDENT AND DECISIONS OF OTHER CIRCUITS.

Respondents seek contractual money damages that they claim PwC owes pursuant to a pre-2008 version of PwC's Plan judicially reformed to comply with a pre-2006 version of ERISA. The Second Circuit correctly recognized that § 502(a)(1)(B) alone could not be used to award money damages in these circumstances. Nevertheless, the court of appeals held that § 502(a)(1)(B) could be used to award contractual money damages *after* the Plan was reformed under § 502(a)(3). That holding conflicts with this Court's decision in *Amara*, 563 U.S. 421, and creates two different 3-1 circuit splits.

A. Section 502(a)(1)(B) Does Not Apply Because Respondents Do Not Seek To Enforce The Plan As Written.

In *Amara*, the district court had held that § 502(a)(1)(B) authorizes reforming an ERISA plan and enforcing the reformed plan terms to pay benefits different from those provided by the plan as written. 563 U.S. at 434. The Second Circuit affirmed based on the district court opinion. *Id.* at 434-35. But this Court vacated that decision and rejected the district court's reasoning that after plan terms are reformed, recalculated benefits are "benefits under the terms of the plan." *Id.* at 434. Although § 502(a)(1)(B) permits

courts in certain circumstances "to look outside the plan's written language in deciding what those terms are," nothing in that "provision authorizes a court to alter those terms … where that change, *akin to the reform of a contract*, seems less like the simple enforcement of a contract as written and more like an equitable remedy." *Id.* at 436 (emphasis added). The Court remanded for a determination of whether relief could be awarded under § 502(a)(3) alone. *Id*. at 445.

Here, Respondents requested benefits that were not available under the terms of PwC's Plan. Respondents could not rely on § 502(a)(1)(B) for such relief because that section is limited to benefits under a plan "as written." *Amara*, 563 U.S. at 436. And what Respondents received was exactly what was written in PwC's Plan: a lump-sum distribution at their election upon their departure from the Plan just as disclosed in the Plan documents. Unlike in *Amara*, the operative Plan documents did not misrepresent what participants would receive as benefits if they took lump sums. Respondents got what the Plan promised.

In reality, Respondents' grievance is that the Plan should have been written *differently*; but § 502(a)(1)(B) cannot be used to rewrite a plan. "The statutory language speaks of '*enforc[ing]*' the 'terms of the plan,' not of *changing* them." *Amara*, 563 U.S. at 436 (alteration in original). And because *Amara* held that courts cannot use § 502(a)(1)(B) to alter plan terms "*akin* to the reform of a contract," *id.* (emphasis added), courts certainly cannot use the provision to award damages when a plan has *actually* been reformed. The sole office of § 502(a)(1)(B) is the "simple enforcement of a contract as written." *Id.* A straightforward application of *Amara* should have

resulted in judgment for PwC on Respondents' claim for damages under § 502(a)(1)(B).

B. Section 502(a)(1)(B) Cannot Be "Combined" With § 502(a)(3).

To sidestep *Amara*, the Second Circuit reasoned that the district court could award contractual money damages under § 502(a)(1)(B) by first "reform[ing]" the Plan as a "preparatory step" pursuant to § 502(a)(3). Pet. App. 17a-18a. The court thereby authorized a combination of the remedial portions of two distinct causes of action—§ 502(a)(1)(B) and § 502(a)(3)—without requiring Respondents to satisfy the conditions for a remedy under either provision alone. The Second Circuit's hybrid remedy creates at least two separate circuit splits regarding the proper use of § 502(a)(1)(B) and conflicts with *Amara* itself.

1. The Third, Fourth, and Eighth Circuits each have held that § 502(a)(1)(B) cannot be used to award benefits pursuant to plan terms that have been judicially rewritten to comply with ERISA.

In *Eichorn* v. *AT&T Corp.*, plaintiffs alleged that the defendants had altered their pension entitlements in violation of § 510 of ERISA, and sought "a decree ordering [the defendants] to adjust [their] pension records" as redress for that violation that "would result in an immediate obligation on the part of the defendants to pay the plaintiffs money that was rendered 'past due' by operation of the court's decree." 484 F.3d at 653. The Third Circuit rejected this approach, holding that § 502(a)(1)(B) "provides remedies *only* against a defendant who has failed to comply with the terms of a benefits plan." *Id.* (emphasis added). Because "the plaintiffs ha[d] alleged that the defendants interfered with their ability to become eligible for further benefits, not that

the defendants ha[d] breached the terms of the plan itself," the Third Circuit held that § 502(a)(1)(B) did "not provide relief for the violation of ERISA [§ 510] that the plaintiffs ha[d] alleged." *Id.*

The Fourth Circuit reached the same conclusion in *Pender* v. *Bank of America Corp.*, 788 F.3d 354 (4th Cir. 2015). There, plaintiffs tried "to bring a claim for benefits due" under § 502(a)(1)(B) "based on a misapplied formula," arguing that the defendant "failed to administer the plan in a manner consistent with ERISA's minimum standards." *Id.* at 361 (quotation marks omitted). But *Amara*, the Fourth Circuit held, "explicitly preclude[d] them from using this provision to recover the relief they seek" because they "sought to enforce the plan *not as written*, but as it should properly be enforced under ERISA." *Id.* at 362 (emphasis added). Since the "[p]laintiffs' requested remedy would require the court to do more than simply enforce a contract as written," it was not available under § 502(a)(1)(B), notwithstanding the alleged ERISA violation. *Id.*

The Eighth Circuit's decision in *Ross* v. *Rail Car America Group Disability Income Plan*, 285 F.3d 735 (8th Cir. 2002), is in accord. There, the plaintiff sought to "reform the [p]lan by obtaining a declaration" that two plan amendments that reduced the amount and duration of his benefits had violated ERISA and thus were void. *Id.* at 740. The Eighth Circuit held that § 502(a)(1)(B) "does not authorize such a claim." *Id.* Section 502(a)(1)(B), the court explained, "authorizes a participant to bring an action to recover benefits, enforce rights, or clarify rights to future benefits *under the terms of the plan*." *Id.* But the plaintiff did "not seek[ ] to obtain benefits under the terms of the [p]lan" and thus could not proceed

under § 502(a)(1)(B). *Id.*; *accord Soehnlen* v. *Fleet Owners Ins. Fund*, 844 F.3d 576, 583 n.2 (6th Cir. 2016) (concluding that the court lacked jurisdiction but noting that "an action attempting to re-write" allegedly unlawful plan terms "is unavailable under § [502](a)(1)(B)" because "[t]he statutory language speaks of enforcing the terms of the plan, not changing them").

2. Although the Second Circuit acknowledged "controlling cases" limiting available remedies under "§ 502(a)(1)(B) independently" regardless of alleged ERISA violations, the court disregarded those cases because none involved the application of § 502(a)(1)(B) and § 502(a)(3) "simultaneously." Pet. App. 18a-19a. But at least three circuits have rejected attempts to combine § 502(a)(1)(B) and § 502(a)(3) into a single reform-and-enforce remedy. This mix-and-match approach is especially untenable where, as here, it evades limitations that Congress prescribed for each form of relief.

The Third Circuit rejected combining § 502(a) remedies in *Eichorn*. There, as noted, the plaintiffs brought a claim seeking additional benefits based on a violation of ERISA § 510. *See* 484 F.3d at 646-47. They urged the court to award those benefits by: (1) enjoining the employer under § 502(a)(3) to revise its pension records as if the plaintiffs had remained with the employer until retirement, and (2) ordering the defendants under § 502(a)(1)(B) "to pay the plaintiffs money that was rendered 'past due' by operation of the court's [§ 502(a)(3)] decree." *Id.* at 653-55. The Third Circuit refused to adopt this two-step, "bootstrap approach," holding that § 502(a)(1)(B) does not authorize damages for a "violation of the terms of a benefit plan" where a court effectively

creates the violation by altering plan documents under § 502(a)(3) to devise new terms. *Id.* The Second Circuit here refused to follow the Third Circuit's holding on the grounds that *Eichorn* pre-dates *Amara* and "contradicts [Second Circuit] precedent." Pet. App. 18a.[1]

The First Circuit reached a similar conclusion in *Todisco* v. *Verizon Communications, Inc.*, 497 F.3d 95 (1st Cir. 2007). There, the plan administrator had denied the plaintiff's claim for plan benefits because her husband, allegedly relying on representations made by the plan sponsor, did not submit required documents. *See id.* at 97. The plaintiff brought a freestanding equitable estoppel claim under § 502(a)(3). *See id.* at 99-101. But she also made an "alternative" claim consisting of "two steps" in which the court would first use equitable estoppel to treat the employer's misrepresentations as part of the plan and then, under § 502(a)(1)(B), would "allow her to claim, *under a reformulated plan*, the benefits that were promised to her husband." *Id.* at 101 (emphasis added). The First Circuit denied relief to the plaintiff in all respects, despite her attempt to escape "the actual language of [her] plan" by seeking "to alter the plan terms" through an equitable remedy and then "recast[ing]" her action as one to enforce the "reformulated plan" under § 502(a)(1)(B). *Id.* at 98, 101. The court rejected the plaintiff's invocation of "two step" relief because the plaintiff was "expressly

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[1] It is immaterial that *Eichorn* pre-dates *Amara*. *Amara confirmed* the correctness of the Third Circuit's holding, and the Third Circuit continues to invoke *Eichorn* in rejecting "'lawyerly inventiveness'" in evading the limitations on ERISA's remedies. *Cent. States, Se. & Sw. Areas Health & Welfare Fund* v. *Bollinger, Inc.*, 573 F. App'x 197, 202 (3d Cir. 2014).

seek[ing] benefits not authorized by the plan's terms." *Id.* at 101-02 (emphasis omitted). Although the court was "sympathetic" about "the facts of [the plaintiff's] case," it noted that "the Supreme Court has unambiguously held that such considerations may not overcome ERISA's textual commands." *Id.* at 102-03.

The Ninth Circuit endorsed the same rationale in *Goeres* v. *Charles Schwab & Co.* by affirming the rejection of a two-step remedy under § 502(a)(1)(B) and § 502(a)(3) "for the reasons stated by the district court." 220 F. App'x 663, 663 (9th Cir. 2007). As summarized by the district court, the "[p]laintiff argued that placing him back into the Retirement Plan as of a certain date is equitable relief, regardless of what flows from such relief." *Goeres* v. *Charles Schwab & Co.*, 2004 WL 2203474, at *4 (N.D. Cal. Sept. 28, 2004). "Once in his desired position, plaintiff would bring suit under ERISA section [502(a)(1)] to recover benefits due to him under the terms of the Retirement Plan." *Id.* The district court refused to allow that two-step "equitable" remedy because "the substance of the remedy plaintiff seeks remains monetary compensation." *Id.*; *see also Watkins* v. *Westinghouse Hanford Co.*, 12 F.3d 1517, 1528 (9th Cir. 1993) (plaintiffs could not rely on equitable estoppel to create new plan terms enforceable under § 502(a)(1)(B) because that provision only allows plaintiffs to recover benefits under the "terms of the plan").

3. Not only does the Second Circuit's decision conflict with each of the court of appeals decisions discussed above, it also conflicts with *Amara* itself. In *Amara*, this Court considered the different avenues of relief afforded by § 502(a)(1)(B) and § 502(a)(3), and held that *only* § 502(a)(3) could potentially authorize

a remedy for the plaintiffs because they were not seeking benefits under the terms of the plan "as written." 563 U.S. at 435-37, 445. The Court then vacated the Second Circuit's affirmance of a district court decision ordering reformation-and-enforcement of a plan under § 502(a)(1)(B), and remanded the case for a determination whether any "*traditional* equitable relief" could "be imposed under § 502(a)(3)" to provide plaintiffs with the relief they sought, which included equitable monetary relief. *Id.* at 438-42, 445 (emphasis added).

The Second Circuit's judgment cannot be squared with this Court's judgment in *Amara*. If courts could award the Second Circuit's hybrid remedy, then *Amara* would not have ruled that relief under § 502(a)(1)(B) was unavailable and remanded for consideration of whether § 502(a)(3) alone could provide equitable relief. And the Court's extended discussion of traditional equitable doctrines for awarding monetary relief would have been superfluous if an award of contractual money damages simply "follows" from judicial reformation of plan terms. Pet. App. 18a.

The Second Circuit's hybrid remedy—which cherry-picks the plaintiff-favorable provisions of each subsection while evading their textual limitations—ignores the disjunctive text and structure of § 502(a). The 11 paragraphs of § 502(a) are separated by "or," not "and," with each subsection authorizing a particular set of remedies for a specified set of plaintiffs. *See* 29 U.S.C. § 1132(a). And while "the terms of the plan" can be enforced under either § 502(a)(1)(B) or § 502(a)(3) in appropriate circumstances, § 502(a)(1)(B) notably does *not* provide for enforcement of ERISA. Section 502(a)(3), in

contrast, provides a limited cause of action "to obtain other appropriate equitable relief … to enforce any provisions of this subchapter." *Id.* § 1132(a)(3)(B). In *Mertens*, the Court interpreted "appropriate equitable relief" in § 502(a)(3) to "refer to those categories of relief that were *typically* available in equity (such as injunction, mandamus, and restitution, but *not* compensatory damages)." 508 U.S. at 256 (second emphasis added). That limitation would be rendered meaningless if courts could create hybrid remedies under § 502(a)'s paragraphs. ERISA does not permit the mix-and-match remedy the Second Circuit approved.

II. THE SECOND CIRCUIT'S HOLDING PERMITTING EQUITABLE REFORMATION UNDER § 502(a)(3) ABSENT THE CONDITIONS EQUITY COURTS IMPOSED ON THAT RELIEF CONFLICTS WITH THIS COURT'S PRECEDENT AND DECISIONS OF OTHER CIRCUITS.

The Second Circuit further erred in holding that § 502(a)(3) authorizes reformation of a plan as merely a "preparatory step" for awarding money damages. Pet. App. 18a. That conflicts with this Court's decision in *Great-West* as well as precedent from at least three circuits. Independently, the Second Circuit's holding that equitable reformation is available "in the absence of mistake, fraud, or other conduct traditionally considered to be inequitable," *id.* at 17a, conflicts with precedent from at least three circuits.

A. Section 502(a)(3) Cannot Be Used As A Preparatory Step For Money Damages.

1. This Court has long "rejected" a reading of § 502(a)(3) that would permit courts to award

"whatever relief a court of equity is empowered to provide in the particular case at issue." *Great-West*, 534 U.S. at 210. "[L]egal remedies that would otherwise be beyond the scope of the equity court's authority," *id.*, are similarly beyond the scope of § 502(a)(3). Instead, "the term 'equitable relief' in § 502(a)(3) must refer to 'those categories of relief that were *typically* available in equity.'" *Id.* (quoting *Mertens*, 508 U.S. at 256). In *Great-West*, this Court rejected an attempt to use § 502(a)(3) "to impose personal liability on respondents for a contractual obligation to pay money" under an ERISA plan because such relief "was not typically available at equity." *Id.* "Almost invariably," this Court explained, "suits seeking (whether by judgment, injunction, or declaration) to compel the defendant to pay a sum of money to the plaintiff are suits for 'money damages,' as that phrase has traditionally been applied, since they seek no more than compensation for loss resulting from the defendant's breach of legal duty." *Id.* (quoting *Bowen* v. *Massachusetts*, 487 U.S. 879, 918-19 (1988) (Scalia, J., dissenting)). And "'[m]oney damages are, of course, the classic form of legal relief.'" *Id.* (alteration in original; emphasis omitted) (quoting *Mertens*, 508 U.S. at 255).

Despite this settled precedent, the Second Circuit held that Respondents could use § 502(a)(3) to reform a prior version of PwC's Plan to comply with a prior version of ERISA, with the reformation serving no purpose other than to give former members of the Plan a vehicle to obtain monetary compensation under § 502(a)(1)(B). Reformation of PwC's Plan would not affect the Plan today one whit, or avert any current or threatened failure to perform whipsaw calculations, because Congress amended ERISA in

2006 to clarify that such calculations are not required. The sole purpose of the reformation is to create a cause of action for the payment of money damages to the Respondents, who have no interest in the terms of their former Plan *except* as a vehicle to obtain greater benefits. Under *Great-West*, the nature of that claimed relief is quintessentially an action at law for which § 502(a)(3) provides no remedy.

The Second Circuit nonetheless believed that equitable reformation could serve as the first step in a two-step remedy of reformation-and-enforcement, Pet. App. 18a, citing this Court's statement in *Amara* that "equity often considered reformation a 'preparatory step' that 'establishes the real contract,'" 563 U.S. at 441 (quoting 4 S. Symons, *Pomeroy's Equity Jurisprudence* § 1375, at 999 (5th ed. 1941)). In fact, *Amara* did not say that reformation could set up an award of *contractual* money damages, and such a statement would have conflicted with *Great-West*. *Amara*'s only discussion of monetary relief under § 502(a)(3) concerned remedies that were *equitable* in nature through and through, specifically unjust enrichment, equitable estoppel, and surcharge. *Id.* at 441-42. *Amara* therefore does not sanction the Second Circuit's disregard of *Great-West*.

2. Consistent with *Great-West*, numerous courts of appeals have held that an alleged violation of ERISA will not support equitable reformation of a plan for the purpose of awarding money damages.

In *Eichorn*, the Third Circuit held that ordering an employer to "adjust its pension records retroactively to create an obligation to pay the plaintiffs more money, both in the past and going forward," was "in essence, a request for compensatory damages merely framed as an 'equitable' injunction."

484 F.3d at 655. The Third Circuit held the district court "rightly concluded that the requested relief is not available under § 502(a)(3)." *Id.*

In *Crosby* v. *Bowater Inc. Retirement Plan for Salaried Employees of Great Northern Paper, Inc.*, the Sixth Circuit rejected the argument that a claim for benefits allegedly past due under the requirements of ERISA stated a claim for "equitable relief" under § 502(a)(3). 382 F.3d 587, 596 (6th Cir. 2004). The court of appeals concluded that "[t]he statutory origin of Bowater's asserted obligation to pay Mr. Crosby an additional $5,249.08, with interest, does not mean that a breach of the obligation to pay is redressable through a suit in equity rather than an action at law." *Id.* On the contrary, an action "to redress the breach of a statutory obligation to pay a sum certain" historically was "an action at law." *Id.*

In *Millsap* v. *McDonnell Douglas Corp.*, the Tenth Circuit likewise rejected the application of § 502(a)(3) where "the only remedy sought [was] a request for compensatory damages representing backpay." 368 F.3d 1246, 1256 (10th Cir. 2004). The court of appeals held that "the facts necessary to support the incidental to or intertwined with exception [to the general rule that a monetary award constitutes legal relief] are 'clearly absent from the case.'" *Id.* (quoting *Chauffeurs, Teamsters & Helpers, Local No. 391* v. *Terry*, 494 U.S. 558, 570 (1990)).

In each of these cases, the court of appeals properly refused to award equitable relief in an action seeking money damages for alleged violations of ERISA. The Second Circuit's decision conflicts with these decisions.

B. Equitable Reformation Requires Fraud Or Mistake Not Alleged Here.

The Second Circuit independently erred by holding that equitable reformation is "categorically available" whenever plan terms violate ERISA, Pet. App. 16a, and that equitable remedies under § 502(a)(3) are not limited "to the specific circumstances under which those remedies were typically available in equity courts," *id.* at 15a. That holding contravenes this Court's precedents on the proper scope of § 502(a)(3) and conflicts with precedent from at least three circuits that have declined to apply § 502(a)(3) to reform a plan in the absence of the traditional equitable predicates of fraud or mistake.

1. In *Great-West*, this Court held that equitable remedies under § 502(a)(3) must satisfy "the conditions that equity attached to [their] provision," expressly rejecting an approach that "looks only to the nature of the relief." 534 U.S. at 216. The Court reaffirmed that holding in *Montanile* v. *Board of Trustees of National Elevator Industry Health Benefit Plan*, which recognized that § 502(a)(3) requires "turn[ing] to standard equity treatises" to determine whether, "in the circumstances presented," the requested relief "was typically available in premerger equity courts." 136 S. Ct. at 657-59; *see also Liu* v. *SEC*, 140 S. Ct. 1936, 1942-46 (2020) (explaining that under *Great-West* and *Montanile* disgorgement awards can qualify as appropriate "equitable relief" only when they comply with "longstanding equitable principles" derived from treatises and premerger equity practice).

Instead of looking to the circumstances under which reformation was traditionally available in

premerger courts of equity, the Second Circuit held that a court may award any remedy under § 502(a)(3) that was a "typical and traditional *form* of equitable relief" prior to the merger of law and equity—without regard to "the specific *circumstances* under which … remedies were typically available in equity courts." Pet. App. 15a-16a (emphases added). That holding echoes *Great-West*'s *dissent*, which argued that courts should be permitted to award any "'*categories* of relief'" under § 502(a)(3) if they "'were typically available in equity.'" 534 U.S. at 231 (Ginsburg, J., dissenting) (emphasis altered) (quoting *Mertens*, 508 U.S. at 256). That categorical view of § 502(a)(3) has never commanded a majority of this Court.

Contrary to the Second Circuit's reasoning, *Varity Corp.* v. *Howe*, a fraud case, does not relax the limitations on § 502(a)(3) first announced in *Mertens*. Pet. App. 17a (citing *Varity Corp.* v. *Howe*, 516 U.S. 489, 512 (1996)). As the Court explained in *Great-West*, "*Varity Corp.* did not hold … that § 502(a)(3) is a catchall provision that authorizes all relief that is consistent with ERISA's purposes and is not explicitly provided elsewhere." 534 U.S. at 221 n.5 (emphasis omitted). Rather, *Great-West* held—and *Montanile* reaffirmed—that an equitable remedy under § 502(a)(3) must satisfy "the conditions that equity attached to its provision." *Id.* at 216; *see also Montanile*, 136 S. Ct. at 657-59.

The Second Circuit's decision also conflicts with this Court's precedent recognizing that, in courts of equity, reformation was "'chiefly occasioned by fraud or mistake.'" *Amara*, 563 U.S. at 441 (quoting 4 Pomeroy § 1375, at 1000). In *Amara*, this Court surveyed premerger equity practice and expressly limited reformation to circumstances in which

premerger courts of equity *typically* reformed written instruments, that is, fraud or mutual mistake. *See id.* at 440-41 ("The power to reform contracts … is a traditional power of an equity court, not a court of law, and was used to prevent fraud.") (surveying authorities). Moreover, equity courts traditionally required plaintiffs to prove fraud or mistake by clear and convincing evidence. *See* 2 Dan Dobbs, *Law of Remedies* § 11.6(1), at 743 (2d ed. 1993). If the Second Circuit had followed the traditional practice in premerger equity courts, it could not have permitted reformation in the circumstances of this case. Here, Respondents have never alleged fraud or mistake in connection with the amount of lump-sum benefits paid under the Plan, much less by clear and convincing evidence. *See* Pet. App. 39a ("Plaintiffs do not allege mistake, fraud, or inequitable conduct here."). When they left PwC's Plan prior to 2006, Respondents received exactly what the Plan promised. Courts of equity traditionally would not have reformed a contract in those circumstances.

2. At least three other circuits have limited reformation to the necessary predicates of fraud or mutual mistake.

In *Pearce* v. *Chrysler Group LLC Pension Plan*, the Sixth Circuit explained that "[a] contract may be reformed in two situations: (1) where there is a mutual mistake of both parties; or (2) where one party is mistaken and the other commits fraud or engages in inequitable conduct." 893 F.3d 339, 347 (6th Cir. 2018) (quotation marks omitted). There, the parties did not dispute that the plaintiff was "unilaterally mistaken about his eligibility" for benefits, and therefore the court remanded for the district court to consider whether the defendant had "engaged in

either fraudulent or inequitable conduct." *Id.* at 347-48; *see also Briggs* v. *Nat'l Union Fire Ins. Co.*, 774 F. App'x 942, 949 (6th Cir. 2019) (explaining that "reformation under § 502(a)(3) requires a mistaken belief by one party caused by fraud or inequitable conduct by the other party, with the latter element mirroring the definition of fraud in equitable estoppel") (citing *Pearce*, 893 F.3d at 347-49).

The Eighth Circuit articulated the same standard in *Silva* v. *Metropolitan Life Insurance Co.*, 762 F.3d 711 (8th Cir. 2014). There, the court cited, with approval, post-*Amara* decisions describing "the reformation remedy available under § [502](a)(3) as allowing courts to reform contracts that failed to express the agreement of the parties, owing either to mutual mistake or to the fraud of one party and the mistake of the other." *Id.* at 723 (quotation marks omitted). Accordingly, the court permitted the plaintiff to bring a claim for reformation under § 502(a)(3) on remand, explaining that he might "be able to show mutual mistake or fraud of one party and the mistake of the other." *Id.* (quotation marks omitted).

The Ninth Circuit limited reformation in the same way in *Gabriel* v. *Alaska Electrical Pension Fund*, 773 F.3d 945 (9th Cir. 2014). There, the court explained that "'appropriate equitable relief' may include 'the reformation of the terms of the plan, in order to remedy the false or misleading information' provided by a plan fiduciary." *Id.* at 955 (quoting *Amara*, 563 U.S. at 440). But "[t]he power to reform contracts is available *only* in the event of mistake or fraud." *Id.* (emphasis added). And because the plaintiff could not satisfy those conditions, he was not entitled to equitable reformation of the plan. *See id.* at 961-62;

accord Morales v. *Intelsat Glob. Serv. LLC*, 554 F. App'x 4, 5 (D.C. Cir. 2014) ("Although contract reformation is an equitable remedy, it has long been reserved for those situations in which the moving party demonstrates that reformation is necessary to either *correct a mistake or prevent fraud*." (emphasis added)).

The Second Circuit's holding that "§ 502(a)(3) authorizes district courts to grant equitable relief—including reformation—to remedy violations of subsection I of ERISA, even *in the absence* of mistake, fraud, or other conduct traditionally considered to be inequitable," Pet. App. 17a (emphasis added), is wrong, and conflicts with the holdings of those other circuits.

III. THIS CASE IS AN EXCELLENT VEHICLE FOR RESOLVING THE IMPORTANT QUESTION PRESENTED.

This case is an excellent vehicle for clarifying the relief available under § 502(a)(1)(B) and § 502(a)(3). No factual issues cloud the Second Circuit's sweeping legal holdings. Indeed, if PwC were to prevail before this Court, it would be entitled to judgment on the pleadings, bringing this long-running litigation to a close. As the Court explained in *Amara*—when it addressed "a preliminary question" about ERISA's remedies instead of the question about ERISA's standards on which it granted certiorari—if § 502(a) "does not in fact authorize" the award Respondents seek, then whether PwC violated ERISA "is beside the point." 563 U.S. at 435.

Moreover, there is no alternative ground for upholding the Second Circuit's judgment. In fourteen years of litigation, Respondents have never alleged that the lump-sum payment they received was the

product of fraud or mutual mistake. Rather, Respondents expressly conceded that they do *not* allege "that [PwC] committed fraud in connection with the projection." Pet. App. 50a n.2. Nor could Respondents allege fraud or mistake, because the lump-sum benefits they received upon their departure from PwC are exactly what they were promised. Thus, there would be no need for this Court to remand the case on the question of fraud or mistake; the case presents an exceptionally clean vehicle. And even if reformation under § 502(a)(3) were somehow available here, that would not justify the Second Circuit's ultimate holding that the district court could award money damages under the reformed Plan under § 502(a)(1)(B).[2]

This Court's review is especially warranted in light of the many divisions created by the Second Circuit's decision. As a result of the Second Circuit's opinion, ERISA plan participants who sue in Connecticut, New York, and Vermont are "categorically" entitled to seek a money damages remedy whenever a plan violates subchapter I of ERISA, whereas plan participants who sue in numerous other States cannot. This regional diversity in available remedies will cause administrative burdens for multistate plans and arbitrary unfairness for plan members. In enacting ERISA, Congress deliberately sought to create a single, uniform set of legal rules to avoid a geographical "patchwork" of different regimes that

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[2] Respondents incorrectly argued below "that the district court exceeded the scope of" the court of appeals' prior "mandate in reaching PwC's argument that no relief was available." Pet. App. 4a n.1. Because the court of appeals disregarded that issue and reached the merits, *see id.*, it does not hinder this Court's review.

would frustrate efficiency and "unduly discourage employers from offering ERISA plans in the first place." *Conkright* v. *Frommert*, 559 U.S. 506, 517 (2010) (alteration omitted). Circuit-by-circuit variance "violates ERISA's policy of inducing employers to offer benefits by assuring a predictable set of liabilities, under uniform standards of primary conduct and *a uniform regime of ultimate remedial orders and awards when a violation has occurred*." *Rush Prudential HMO, Inc.* v. *Moran*, 536 U.S. 355, 379 (2002) (emphasis added).

In addition to undermining national uniformity, the Second Circuit's mix-and-match remedy also creates significant uncertainty about the litigation risks employers face. For example, because "ERISA does not provide a statute of limitations for actions" under § 502(a), courts apply "the limitations period provided by the most nearly analogous state statute." *Heimeshoff*, 571 U.S. at 104. The Second Circuit's holding thus makes it impossible to discern what the limitations period would be in a State that provides a statute of limitations period for breach of contract—the most analogous provision to a claim under § 502(a)(1)(B)—that differs from the period applicable to equitable remedies analogous to claims under § 502(a)(3). *Compare*, *e.g.*, *Hogan* v. *Kraft Foods*, 969 F.2d 142, 145 (5th Cir. 1992) (applying four-year Texas statute of limitations for contract to § 502(a)(1)(B) claim), *with N. Cypress Med. Ctr. Operating Co.* v. *Cigna Healthcare*, 781 F.3d 182, 205 (5th Cir. 2015) (applying two-year Texas statute of limitations for unjust enrichment to § 502(a)(3) claim).

The decision below also invites forum shopping by permitting different remedies in different circuits.

Plaintiffs can sue plans in federal court in any district "where the plan is administered, where the breach took place, or where a defendant resides or may be found." 29 U.S.C. § 1132(e)(2). Plans like PwC's that operate nationwide or in multiple States (as many do) may be subject to any of several circuits' laws. Thus, enterprising class counsel will be able—so long as the Second Circuit's decision stands—to expand the remedies available by suing in the Second Circuit instead of elsewhere. This Court's review is necessary to avoid opportunistic forum shopping and to ensure uniform remedies nationwide to avoid chilling employers' incentives to sponsor ERISA plans.

Finally, this case is an excellent vehicle because it vividly illustrates the potential for inequity that will flow from the Second Circuit's judgment. Each Respondent left PwC's Plan prior to 2006, received exactly the lump-sum payment promised—the full amount of their account balance—and were free to invest those funds as they saw fit. Despite having withdrawn their account balances, Respondents now seek money damages based on a projection of future investment experience they supposedly would have received had they remained in the Plan. Awarding such damages would enrich Respondents—potentially by billions of dollars—relative to participants who remained in the Plan. Congress, recognizing the inequity of such windfalls, amended ERISA in 2006 to clarify that whipsaw calculations are not required. The IRS likewise acknowledged PwC's good-faith reliance on the IRS's prior approvals of the Plan. Those federal judgments show where the equities lie in this case; the Second Circuit's judgment, in contrast, authorizes "equitable" ERISA relief in plainly inequitable circumstances. Review is warranted.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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