No. 25-1142

IN THE
Supreme Court of the United States

MARK ZAVISLAK,

Petitioner,

v.

NETFLIX, INC.,

Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit

BRIEF IN OPPOSITION

CHRISTOPHER J. RILLO
CATHERINE SCOTT
BAKER BOTTS L.L.P.
101 California Street
Suite 3200
San Francisco, CA 94111
(415) 291-6200

AARON M. STREETT
Counsel of Record
CHRISTOPHER E. TUTUNJIAN
BAKER BOTTS L.L.P.
910 Louisiana Street
Houston, TX 77002
(713) 229-1234
aaron.streett@bakerbotts.com

Counsel for Respondent Netflix, Inc.

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D.C. 20002

QUESTION PRESENTED

Whether the court of appeals correctly affirmed the district court's conclusion, after a bench trial, that four claims administration agreements did not fall within ERISA Section 104's disclosure obligation.

RULE 29.6 DISCLOSURE STATEMENT

Respondent Netflix, Inc. (NASDAQ: NFLX) has no parent corporation, and no publicly held company owns 10% or more of the stock of Netflix, Inc.

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BRIEF IN OPPOSITION

INTRODUCTION

Nothing in the court of appeals' short, unpublished opinion warrants this Court's review. The Ninth Circuit employs the same test as other circuits for determining which plan documents must be produced under Section 104 of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1024(b)(4). Nor is there a split over whether claims administration agreements must be disclosed under Section 104. While the Seventh and Tenth Circuits required disclosure of claims administration agreements on the specific facts and procedural postures in those cases, the Ninth Circuit has never held in a precedential opinion that claims administration agreements need not be disclosed. Here, it merely held, after a

bench trial, and in a nonbinding opinion, that the agreements at issue did not satisfy the Section 104 test that all circuits apply. That narrow issue lacks practical importance and does not merit plenary review in the absence of a clear disagreement among the circuits.

STATEMENT

I. BACKGROUND

A. Legal Background

"ERISA is a comprehensive statute designed to promote the interests of employees and their beneficiaries in employee benefit plans." *Shaw* v. *Delta Air Lines, Inc.*, 463 U.S. 85, 90 (1983). "[O]ne of ERISA's central goals is to enable plan beneficiaries to learn their rights and obligations at any time." *Curtiss-Wright Corp.* v. *Schoonejongen*, 514 U.S. 73, 83 (1995). To that end, Congress has created "an elaborate scheme" for disclosure that includes Section 104. *Ibid.*

Section 104 governs participants' and beneficiaries' requests for certain plan information and requires a plan administrator to furnish a limited set of plan documents. 29 U.S.C. § 1024(b)(4). It provides in relevant part:

> The administrator shall, upon written request of any participant or beneficiary, furnish a copy of the latest updated summary, plan description, and the latest annual report, any terminal report, the bargaining agreement, trust agreement, contract, or other instruments under which the plan is established or operated.

Ibid. Thus, Section 104 requires disclosure of enumerated plan documents—*e.g.*, plan descriptions and annual reports—and any "contract, or other instruments under which the plan is established or operated." *Ibid.* The documents subject to Section 104's disclosure requirements have been characterized as "governing plan documents." *Curtiss-Wright*, 514 U.S. at 84. Congress enacted

disclosure requirements like Section 104 "so that the individual participant knows exactly where he stands with respect to the plan—what benefits he may be entitled to, what circumstances may preclude him from obtaining benefits, what procedures he must follow to obtain benefits, and who are the persons to whom the management and investment of his plan funds have been entrusted." S. Rep. No. 93-127, at 27 (1973), *reprinted in* 1974 U.S.C.C.A.N. 4838, 4863; see also *ibid.* ("[I]ndividual participants and beneficiaries will be armed with enough information to enforce their own rights as well as the obligations owed by the fiduciary to the plan in general.").

B. Factual Background

1. Netflix maintains a self-funded plan, the Netflix, Inc. Health and Welfare Benefits Plan ("Plan"), for which Netflix acts as the Plan administrator. Pet. App. 8a-9a. Netflix administers the Plan pursuant to seven governing documents ("Governing Plan Documents"). *Id.* at 13a-14a, 18a-21a. These seven Governing Plan Documents are member-facing documents that describe coverages, exclusions, participant obligations, and other detailed information. *Id.* at 19a. Netflix consults these Governing Plan Documents—and only these Documents—if a member or participant has an inquiry about their benefits. *Id.* at 21a. The Governing Plan Documents—and only these Documents—determine whether a participant's claim is allowed or denied. *Id.* at 19a. They thus form a comprehensive set that informs plan participants of their benefits, rights, and claim procedures. *Id.* at 18a-19a.[1]

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[1] Zavislak repeatedly characterizes these Documents as mere "unenforceable summaries." Pet. 4-5, 13. But the Adoption Agreement—"the governing document of the Plan"—incorporates the benefits detailed in the summaries and benefits booklets into the Plan, and thus the Adoption Agreement and the six other Documents together form the definitive set of benefits terms. Pet. App. 18a-19a.

Netflix uses a third-party administrator and three claims administrators that provide claims administration and processing services to the Plan—Collective Health, LLC, Anthem Blue Cross Life & Health Insurance Company, Delta Dental of California, and Vision Service Plan. *Id.* at 9a. Netflix maintains separate agreements, known as claims administration agreements, with each of the administrators; these agreements define the administrators' obligations and services to the Plan. *Ibid.*; *id.* at 22a. These agreements do not address benefits provided by the Plan, nor do they provide any terms or benefits to Plan participants. *Id.* at 63a-72a (discussing contents of agreements). They govern only the relationships between Netflix and its third-party service providers. *Id.* at 63a, 72a.

2. Petitioner Mark Zavislak's spouse was a Netflix employee and Plan participant who named Zavislak as a beneficiary. *Id.* at 9a. In the middle of the COVID-19 pandemic, Zavislak mailed Netflix a written request for "documents governing the operation of the respective plan." *Id.* at 12a. Due to pandemic working conditions, Netflix neither received nor responded to Zavislak's letter. *Ibid.*

Zavislak sent a second letter, which stated for the first time that he made his request pursuant to ERISA Section 104. *Id.* at 12a-13a. Shortly after Netflix received the letter, it provided Zavislak with the Governing Plan Documents. *Id.* at 13a-14a. Unhappy with this document production, Zavislak demanded additional documents, including the four claims administration agreements, which Netflix did not provide. *Id.* at 14a-16a.

II. PROCEEDINGS BELOW

A. Proceedings in the district court

Zavislak sued Netflix in the Northern District of California, claiming that Netflix was required to disclose the

four claims administration agreements.[2] Pet. App. 8a. Using the parties' summary-judgment submissions as a trial record, the district court issued detailed findings of fact and conclusions of law holding that Netflix fulfilled its obligations under Section 104 when it provided the seven Governing Plan Documents. *Id.* at 8a, 93a.

Applying *Hughes Salaried Retirees Action Committee* v. *Administrator of Hughes Non-Bargaining Retirement Plan*, 72 F.3d 686 (9th Cir. 1995) (en banc), and *Shaver* v. *Operating Engineers Local 428 Pension Trust Fund*, 332 F.3d 1198 (9th Cir. 2003), the district court found that Netflix was not required to provide the claims administration agreements under Section 104. *Id.* at 63a, 72a, 77a, 79a. Under those decisions, Section 104 requires disclosure of documents "that allow the individual participant to know exactly where he stands with respect to the plan—what benefits he may be entitled to, what circumstances may preclude him from obtaining benefits, what procedures he must follow to obtain benefits, and who are the persons to whom the management and investment of his plan funds have been entrusted." *Hughes*, 72 F.3d at 690 (cleaned up); see Pet. App. 60a-62a (discussing *Hughes* and *Shaver*). According to the district court, the seven Governing Plan Documents fully conveyed participants' rights and obligations under the Plan. Pet. App. 62a-63a. By contrast, the district court concluded that the four claims administration agreements did not address terms or benefits provided by the Plan but instead governed the relationships between Netflix and its third-party service providers. *Id.* at 63a, 72a; see also *id.* at 63a-72a (analyzing whether claims administration agreements must be

[2] Zavislak claimed below that he was entitled to additional documents. Pet. App. 3a, 59a. He now pursues only the claims administration agreements. Pet. i.

disclosed). Thus, Netflix was not required to disclose those agreements. *Id.* at 63a, 72a.

B. Proceedings in the court of appeals

The Ninth Circuit affirmed in a brief, unpublished opinion. Pet. App. 2a. The court reviewed "de novo the district court's interpretation of Section 104" and "review[ed] for clear error the district court's factual findings as to the documents' content." *Id.* at 3a-4a. Applying the *Hughes* test to the facts found by the district court, the court of appeals concluded that the claims administration agreements "govern only the relationship between Netflix and the third parties providing various claims-related services, not the actual benefits to which Plan participants are entitled or the processes Plan participants must undergo to obtain those benefits." *Id.* at 4a. Accordingly, those agreements are not "contracts * * * under which the plan is established or operated" for purposes of Section 104. *Ibid.*

Zavislak sought panel rehearing and rehearing en banc, which the court denied without recorded dissent. *Id.* at 96a.

REASONS FOR DENYING THE PETITION

The petition erroneously alleges a circuit split over the interpretation of ERISA Section 104, 29 U.S.C. § 1024(b)(4), and whether Section 104 requires production of claims administration agreements between a plan sponsor and third-party claims administrator. There is no division among the courts of appeals, and this case is otherwise unworthy of review.

Zavislak first contends that the Ninth Circuit employs an atextual "information test" for Section 104, while every other circuit "strictly adhere[s] to the statutory text." Pet. 6. Not so: The Ninth Circuit uses the same textual methodology and applies fundamentally the same interpretation of Section 104 as every other circuit. Nor is there a

split between the Ninth Circuit and the Seventh and Tenth Circuits over whether Section 104 requires disclosure of claims administration agreements. The decision below is unpublished and thus establishes no Ninth Circuit precedent governing claims administration agreements. In any event, the Seventh and Tenth Circuits ordered disclosure of such agreements in different procedural and factual contexts than exist in this case.

Besides the lack of a circuit split, Zavislak vastly overstates the importance of the question presented, which concerns one type of document with negligible informational value to plan beneficiaries. Moreover, Section 104's application to claims administration agreements is largely academic because ERISA Section 503, 29 U.S.C. § 1133, and accompanying regulations independently guarantee access to all documents, records, and other information relevant to the denial of a benefits claim.

The unpublished decision below is correct and wholly unexceptional. The court of appeals interpreted Section 104 in accord with the approach of other circuits and applied clear-error review to the district court's comprehensive factual findings about the contents of the requested agreements. The petition should be denied.

I. THE CIRCUITS ARE NOT DIVIDED WITH RESPECT TO ERISA SECTION 104

Zavislak's question presented focuses narrowly on whether ERISA Section 104 requires disclosure of claims administration agreements, see Pet. i, mistakenly asserting that the Ninth Circuit splits with the Seventh and Tenth Circuits on that question. The petition also alleges a broader, methodological conflict among the circuits about the proper interpretation and scope of Section 104. Zavislak is incorrect on both counts. We start with the circuits' shared test for Section 104 before turning to Zavislak's precise question presented.

A. According to Zavislak, the Ninth Circuit "stands alone against the uniform consensus of its sister circuits" as the "only court to adopt an information test" to delineate Section 104's reach, while all other circuits ask "not what information a particular document provides to individual participants, but whether it establishes or operates ('governs') the plan." Pet. 6, 8. The petition mischaracterizes the law in the Ninth Circuit as well as in other circuits.

For starters, Zavislak's account of the seminal Ninth Circuit case is off-base. See *Hughes Salaried Retirees Action Comm.* v. *Adm'r of Hughes Non-Bargaining Ret. Plan*, 72 F.3d 686 (9th Cir. 1995) (en banc). That case states a textual test that looks to whether the requested documents govern the plan's terms, procedures, and benefits. The *Hughes* court began with the rule of interpretation that "words grouped in a list should be given related meaning." *Id.* at 689 (citation and internal quotation marks omitted). On that score, it observed that this Court "ha[d] recently characterized the documents subject to § 104(b)(4)'s disclosure requirements as 'governing plan documents.'" *Id.* at 689-690 (quoting *Curtiss-Wright Corp.* v. *Schoonejongen*, 514 U.S. 73, 84 (1995)). Because the statute "requires the disclosure of only the documents described with particularity and 'other instruments' similar in nature," the court held that "[t]he relevant documents are those documents that provide individual participants with information about the plan and benefits." *Id.* at 690-691. Specifically, Section 104 requires disclosure of documents "that allow the individual participant to know exactly where he stands with respect to the plan—what benefits he may be entitled to, what circumstances may preclude him from obtaining benefits, what procedures he must follow to obtain benefits, and who are the persons to whom the management and investment of his plan funds have been entrusted." *Id.* at 690 (cleaned up).

B. With this understanding of *Hughes*'s text-based holding, Zavislak's artificial dichotomy between the Ninth Circuit's "information test" and the other circuits' "governing documents test" falls apart. Indeed, the Ninth Circuit's interpretation of Section 104 is virtually indistinguishable from that of other circuits set forth in Zavislak's cited caselaw. All hold that formal plan documents defining and informing participants of plan terms, benefits, and obligations must be disclosed while administrative documents need not be. Those courts often favorably cite, or even quote, *Hughes* in limning the scope of Section 104.

For example, the First Circuit in *Doe* v. *Travelers Insurance Co.*, 167 F.3d 53 (1st Cir. 1999), favorably cited *Hughes* twice to support its construction of the statute and ultimate holding that the requested documents need not be disclosed. *Id.* at 60 & n.7. Notably, the First Circuit cited *Hughes* alongside another case—*Faircloth* v. *Lundy Packing Co.*, 91 F.3d 648 (4th Cir. 1996)—that Zavislak erroneously suggests is in conflict with *Hughes*. Tracking *Hughes*'s approach, the First Circuit interpreted Section 104 to require that "the formal legal documents that underpin the plan" must be disclosed whereas non-binding documents used to guide claims decisions that do not address rights or benefits need not be disclosed. *Doe*, 167 F.3d at 60.

The Second Circuit in *Board of Trustees of the CWA/ITU Negotiated Pension Plan* v. *Weinstein*, 107 F.3d 139 (2d Cir. 1997), likewise relied on *Hughes* to construe Section 104. *Id.* at 142-144. It cited *Hughes* three times, adopting that case's reasoning in its interpretation of Section 104. *Id.* at 143-144. Like the Ninth Circuit, the Second Circuit explained that "by 'instruments,' Congress meant the formal legal documents that govern or confine a plan's operations, rather than the routine documents with which or by means of which a plan conducts its operations." *Id.* at 142; *id.* at 143 (citing *Hughes* to support

holding that "instruments" clause "was meant to refer to formal documents that govern the plan, not to all documents by means of which the plan conducts operations").

In *Faircloth*, the Fourth Circuit held that "the language 'other instruments under which the plan is established or operated' encompasses formal or legal documents under which a plan is set up or managed." 91 F.3d at 653. It rejected a request "that § 104(b)(4) should be construed broadly to encompass any documents that would assist participants and beneficiaries in determining their rights under a plan and in determining whether a plan is being properly administered." *Ibid.* The court of appeals reached this conclusion in part because of *Hughes*. *Ibid.* ("But our examination of the two circuit court cases addressing the scope of § 104(b)(4) does not convince us that § 104(b)(4) should be construed broadly."); *id.* at 654 (reviewing *Hughes*). In fact, the court stated that the Ninth Circuit's reading may not be restrictive enough. *Ibid.*

The Fifth Circuit favorably cited *Hughes* for its construction of Section 104 in *Murphy* v. *Verizon Communications, Inc.*, 587 F. App'x 140, 142-143 (5th Cir. 2014). The court agreed with *Hughes* and other circuits that "Section 104(b)(4)'s catch-all provision [should be construed] narrowly so as to apply only to formal legal documents that govern a plan" because "the other documents specifically listed in Section 104(b)(4) * * * are all formal documents that either provide plan participants and beneficiaries with notice of their rights and obligations or are the foundational documents under which a plan is created and governed." *Id.* at 144.

The Sixth Circuit's decision in *Allinder* v. *Inter-City Products Corp. (USA)*, 152 F.3d 544 (6th Cir. 1998), likewise adopts an approach remarkably similar to that of *Hughes*. *Id.* at 549. "From the statute's enumeration of the specific terms 'summary plan description,' 'plan

description,' 'bargaining agreement,' and 'contract,' it is apparent that 'other instruments' was meant to refer to documents that provide or contain information *concerning the terms and conditions of the participant's policy*," and "[Section 104's] reference to 'other instruments' is thus properly limited to th[at] class of documents which provide a plan participant with information concerning how the plan is *operated*." *Ibid.* (emphasis in original). Accordingly, "documents used in the *ministerial day-to-day processing* of individual claims pursuant to other documents that determine the plan's operation" need not be disclosed. *Ibid.* (emphasis in original).

In *Mondry* v. *American Family Mutual Insurance Co.*, 557 F.3d 781, 793 (7th Cir. 2009), the Seventh Circuit cited *Hughes* and other consistent cases to interpret Section 104: "The purpose of this disclosure provision is to ensure that the individual participant knows exactly where he stands with respect to the plan. Knowing where one stands with respect to a plan includes having the information necessary to determine one's eligibility for benefits under the plan, to understand one's rights under the plan, to identify the persons to whom management of plan funds has been entrusted, and to ascertain the procedures one must follow in order to obtain benefits." *Id.* at 793 (cleaned up). That test is identical to the Ninth Circuit's.

The Eighth Circuit's decision in *Brown* v. *American Life Holdings, Inc.*, 190 F.3d 856 (8th Cir. 1999), similarly cited *Hughes* to support its construction of Section 104. *Id.* at 861 ("Bearing in mind that the term 'other instruments' should also be read consistently with the more specific terms that precede it in [Section 104], we agree with the circuits that have construed 'other instruments' as meaning, not any document relating to a plan, but only formal documents that establish or govern the plan.").

In *M. S.* v. *Premera Blue Cross*, 118 F.4th 1248 (10th Cir. 2024), the Tenth Circuit explained Section 104's goals

in terms nearly identical to the Ninth Circuit in *Hughes.* Section 104 "allows plan beneficiaries to learn their rights and obligations at any time and puts them in a position to make informed decisions about how best to protect their rights." *Id.* at 1264-1265 (citations and internal quotation marks omitted).

And the same is true with the Eleventh Circuit in *Williamson* v. *Travelport, LP*, 953 F.3d 1278 (11th Cir. 2020), which cites *Hughes* and other aligned cases to construe Section 104. *Id.* at 1294 ("But most circuits interpret 'other instruments' narrowly, explaining that they must be 'formal legal documents' and not merely any documents *related to* a plan.") (emphasis in original).[3]

As this overview reveals, Zavislak cannot establish any meaningful disagreement among the courts of appeals as to the proper interpretation of Section 104. The Ninth Circuit and its sister courts agree that formal plan documents defining and specifying plan terms and benefits must be disclosed. These are the documents that govern the plan and inform participants of their rights. Administrative and ministerial documents need not be disclosed. Zavislak never explains how or why the circuits' slightly varying verbal formulations of the test would result in different outcomes in the real world.

C. Given this methodological consensus, it is perhaps unsurprising that there is no circuit split on Zavislak's

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[3] *Heffner* v. *Blue Cross & Blue Shield of Alabama, Inc.*, 443 F.3d 1330 (11th Cir. 2006), addressed whether class certification was appropriate in an action alleging the claims administrator wrongfully imposed deductibles in violation of the plan's summary plan descriptions. *Id.* at 1333. The issue was whether class members would need to prove individual reliance on the summary plan description, and the court merely made a passing reference to Section 104 to establish that the summary plan description may not be the sole governing plan document, thereby requiring individualized proof of reliance and precluding class certification. *Id.* at 1339-1344.

precise question presented: Whether Section 104 requires disclosure of claims administration agreements. Pet. i.

Zavislak contends that *Mondry* v. *American Family Mutual Insurance Co.*, 557 F.3d 781 (7th Cir. 2009), and *M. S.* v. *Premera Blue Cross*, 118 F.4th 1248 (10th Cir. 2024), require production of claims administration agreements. But even taking that claim at face value, the Ninth Circuit has never held to the contrary in a published opinion. Consequently, no binding circuit precedent would prevent a future panel of that court from requiring production of claims administration agreements that satisfy the *Hughes* test.

Of equal importance, any difference in outcomes between the decision below and those in *Mondry* and *Premera* can be explained by the different procedural and factual contexts in those cases, rather than a disagreement over the meaning of ERISA. The application of settled law to factbound records does not warrant this Court's review, as a brief examination of *Mondry* and *Premera* reveals.

In *Mondry*, after the claims administrator denied coverage for her son's treatment, the plaintiff requested plan documents, including those used in denying coverage. 557 F.3d at 784-792. She then brought a Section 104 claim and a fiduciary-breach claim for the coverage denial. *Id.* at 791. The Seventh Circuit held that the claims administration agreement qualified as "a contract 'under which the plan is established or operated,' such that it falls within the scope of [Section 104]." *Id.* at 796. The court acknowledged that the agreement did not define plan participants' rights or benefits, but because the agreement defined the boundaries between the plan and claims administrators, it provided information a plan participant needs to know and thus qualified for disclosure under Section 104. *Ibid.* ("Where the administration of a plan is divided, as is often the case, the extent of each administrator's authority is

basic information that a plan participant needs to know.") (internal citation omitted).

Similarly, in *Premera*, following the denial of a benefits claim, a family requested a copy of all documents used to evaluate the claim, specifically identifying any administrative services agreements. 118 F.4th at 1254-1256. The family sued under Section 104 and for improper denial of benefits. *Id.* at 1256. The Tenth Circuit explained that Section 104 "allows plan beneficiaries to learn their rights and obligations at any time and puts them in a position to make informed decisions about how best to protect their rights." *Id.* at 1264-1265 (citations and internal quotation marks omitted). The "parties [did] not provide a definition of an administrative services agreement," and the "[d]efendants did not produce the [agreement] during litigation and the full [agreement] [was] not part of the record on appeal." *Id.* at 1256 n.5, 1267 n.14.[4] Nevertheless, the court reasoned that the administrative services agreement fell within the scope of Section 104's disclosure obligation as a governing document that establishes or operates the plan. *Id.* at 1267-1268. The court also observed that the agreement settled the relationship between the plan and claims administrators and "thus better inform[ed] beneficiaries of their rights under the Plan and plac[ed] them in a position to make informed decisions." *Id.* at 1269.[5]

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[4] The court noted that the parties (and the district court) identified "the agreement between Microsoft and Premera as one example" and relied on a reply brief's description of the agreement. *Premera*, 118 F.4th at 1256 n.5 ("That agreement is the 'contract between Premera and Microsoft primarily intended to memorialize the amount Microsoft pays Premera to administer the plan and the services Microsoft purchased from Premera.'")

[5] For the documents at issue falling under the "other instruments" term, the Tenth Circuit applied the same interpretive principles as the Ninth Circuit, citing *Shaver* v. *Operating Engineers Local 428*

As this discussion confirms, the *Mondry* and *Premera* courts applied tests similar to *Hughes* to determine that particular claims administration agreements must be disclosed under Section 104. See also *Becker* v. *Williams*, 777 F.3d 1035, 1039 n.2 (9th Cir. 2015) (stating that Seventh and Ninth Circuits construe Section 104 similarly).[6] Courts reaching different outcomes in applying settled law is unremarkable. What is more, two factual and procedural distinctions may explain the divergent results between those cases and the decision below.

First, *Mondry* and *Premera* both arose in the context of denied benefits claims where plaintiffs sought to understand why their claims were rejected. By contrast, Zavislak submitted an abstract request untethered to any claim. Pet. App. 70a. As *Mondry* illustrates, the connection to a specific claim can affect whether documents must be disclosed under Section 104. See 557 F.3d at 798-801 (internal guidelines had to be disclosed under Section 104 because, although non-binding, they were used as the basis for the benefits denial and thus were effectively documents that govern the plan's operation).

Second, the decision below rested on comprehensive factual findings about the nature of the claims administration agreements Zavislak sought. Pet. App. 62a-72a. *Mondry* and *Premera* were resolved at the summary-judgment stage, and the record in *Premera* did not even contain a copy of the agreement (or a working definition of

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Pension Trust Fund, 332 F.3d 1198 (9th Cir. 2003). *Premera*, 118 F.4th at 1270-1271.

[6] Zavislak misleadingly claims that *Premera* "rejected the Ninth Circuit's reasoning as neither 'persuasive' nor 'instructive.'" Pet. 6 (quoting *Premera*, 118 F.4th at 1268 n.15); *id.* at 11 (same). But *Premera* does not mention *Hughes*; the quoted footnote refers to "a three-sentence analysis in an unpublished order" from the Ninth Circuit. *Premera*, 118 F.4th at 1268 n.15.

it). *Premera*, 118 F.4th at 1254, 1256 n.5, 1267 n.14; *Mondry*, 557 F.3d at 784. Here, the district court, using the parties' submissions as a trial record, conducted a document-by-document analysis and committed no clear error in finding that these particular agreements do not establish or govern the plan and its benefits. Pet. App. 63a-72a. The court of appeals concluded those findings were not clearly erroneous. See *id.* at 3a-4a ("In light of the parties' agreement on how to resolve the case, we review de novo the district court's interpretation of Section 104 and the application of Section 104 to the documents at issue and review for clear error the district court's factual findings as to the documents' content."); *id.* at 4a ("Aside from limited provisions in the VSP CAA (largely duplicative of documents Zavislak received), the four CAAs govern only the relationship between Netflix and the third parties providing various claims-related services, not the actual benefits to which Plan participants are entitled or the processes Plan participants must undergo to obtain those benefits.").

If they had been presented with a similar factual record and procedural posture, the Seventh and Tenth Circuits may well have reached the same result as the decision below. By the same token, a future Ninth Circuit panel may conclude, on a different record, that a claims administration agreement is a governing document that provides important information to participants. To the extent the discrete question that Zavislak presents could ever be certworthy, further percolation is necessary to solidify the positions of the various courts of appeals.

Because there is no circuit split on either the question presented or the broader question of how to interpret Section 104, certiorari should be denied.

II. THE QUESTION PRESENTED IS NOT IMPORTANT

A. Certiorari should also be denied because the question presented is unimportant. The question whether claims administration agreements fall within the scope of Section 104 is an exceedingly narrow issue of little practical effect. This Court's ERISA docket is usually reserved for cases presenting fundamental questions about the statute's architecture—preemption, *Gobeille* v. *Liberty Mut. Ins. Co.*, 577 U.S. 312 (2016); the scope of equitable relief, *Montanile* v. *Bd. of Trs. of Nat'l Elevator Indus. Health Benefit Plan*, 577 U.S. 136 (2016); fiduciary standards, *Fifth Third Bancorp* v. *Dudenhoeffer*, 573 U.S. 409 (2014); and plan interpretation, *US Airways, Inc.* v. *McCutchen*, 569 U.S. 88 (2013). Whether a particular category of contract must be mailed to a participant upon request does not similarly involve a significant question of ERISA jurisprudence or federal law.

Zavislak dramatically overstates the impact of the ruling below. Pet. 11-15. Preserving the uniformity of ERISA law is most pressing when circuits apply different substantive rules to benefit entitlements, fiduciary duties, or preemption—not when they allegedly disagree on the margins of a procedural disclosure obligation.[7]

B. Zavislak's parade of horribles also ignores that ERISA contains other disclosure mechanisms to ensure participants receive all documents that are potentially

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[7] Zavislak asserts that plan administrators have "mirrored" duties. Pet. 2, 12. They must operate the plan "in accordance with the documents and instruments *governing the plan*," 29 U.S.C. § 1104(a)(1)(D) (emphasis added), and they must disclose "instruments *under which the plan is established or operated*," *id.* § 1024(b)(4) (emphasis added). While these categories "overlap[]," they are not the same. *Becker*, 777 F.3d at 1039 ("Indeed, the category described in § 1104(a)(1)(D) may be even *narrower* than that described in § 1024(b)(4)."); see *Murphy*, 587 F. App'x at 145-146 (noting another textual distinction between the two statutes).

relevant to benefits determinations. This structure further limits the importance of whether Section 104 requires disclosure of one type of contract.

Section 503 of ERISA, 29 U.S.C. § 1133, in conjunction with regulations promulgated by the Secretary of Labor, entitles a plan beneficiary to copies of the documents on which a claims administrator has relied in denying a claim for benefits. That statute provides that "[i]n accordance with regulations of the Secretary, every employee benefit plan shall * * * afford a reasonable opportunity to any participant whose claim for benefits has been denied for a full and fair review by the appropriate named fiduciary of the decision denying the claim." 29 U.S.C. § 1133(2). The Secretary's regulations dictate that a plan has not afforded a claimant "full and fair review" unless, *inter alia*, the claimant was provided "reasonable access to, and copies of, all documents, records, and other information relevant to the claimant's claim for benefits." 29 C.F.R. § 2560.503–1(h)(2)(iii). "Many items that do not qualify as documents that govern the establishment or operation of a plan for purposes of [Section 104] may qualify as documents that are relevant to a plan participant's claim for benefits for purposes of section 1133(2) and the Secretary's regulations." *Mondry*, 557 F.3d at 798.

For this reason, Zavislak's "Kafkaesque" scenario of a participant being bound by contract terms he cannot see is already addressed by a separate, broader regulatory framework that guarantees access to all relevant materials upon a claim denial. This Court's docket is better reserved for questions with real-world consequences, not Zavislak's solution in search of a problem.

III. THE DECISION BELOW IS CORRECT

Certiorari should also be denied because the decision below—and Ninth Circuit precedent—faithfully apply Section 104. In *Hughes*, the three-judge panel initially

held that section 104 broadly "requires disclosure of all documents that are 'critical to the operation of the plan.'" 72 F.3d at 690 (citation omitted). The en banc Ninth Circuit, however, explained that this interpretation of Section 104 is too sweeping and "admits of no limiting principle" because it "create[d] a generalized disclosure obligation" under which "a plan administrator would be required to disclose virtually everything in its plan files upon request." *Ibid.* Under the *Hughes* panel's capacious interpretation, "it would be impossible to conceive of any documents even tangentially related to an employee benefit plan which would not fall within § 104(b)(4)'s scope." *Id.* at 691 (cleaned up).

Relying on standard interpretive principles and this Court's description of the documents subject to disclosure as "governing plan documents," the en banc court held that Section 104 "requires the disclosure of only the documents described with particularity and 'other instruments' similar in nature." *Id.* at 689-691. Naturally, that means "[t]he relevant documents are those documents that provide individual participants with information about the plan and benefits." *Id.* at 690. Section 104 therefore requires disclosure of documents "that allow the individual participant to know exactly where he stands with respect to the plan—what benefits he may be entitled to, what circumstances may preclude him from obtaining benefits, what procedures he must follow to obtain benefits, and who are the persons to whom the management and investment of his plan funds have been entrusted." *Ibid.* (cleaned up). That other courts of appeals consistently agree with this interpretive methodology is strong evidence that Ninth Circuit precedent is correct.

The court of appeals fairly applied this interpretation of Section 104 to the record before it. The district court made detailed factual findings regarding the four claims administration agreements, determining that they neither

address benefits provided by the Plan, nor provide any terms or benefits to Plan participants. *Id.* at 63a-72a (discussing contents of agreements). Instead, they govern the relationships between Netflix and its third-party service providers and relate only to the manner in which the Plan is administered. *Id.* at 63a, 72a.[8] As such, they fall outside the scope of Section 104, which applies to a "contract * * * under which the plan is established or operated." 29 U.S.C. § 1024(b)(4). As *Hughes* explains and *Shaver* refines, the phrase "under which the plan is established or operated" limits the universe of disclosable contracts to those that themselves establish or operate the plan, as opposed to contracts that merely facilitate the plan's day-to-day administration. *Shaver*, 332 F.3d at 1202; *Hughes*, 72 F.3d at 690. Based on these reasonable factual findings and sound legal conclusions, the Ninth Circuit correctly affirmed the district court's holding that the agreements need not be disclosed. Pet. App. 4a.

CONCLUSION

The Court should deny the petition.

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[8] Zavislak complains that, although a portion of the VSP claims administration agreement described plan benefits, the court of appeals did not require its production because it was duplicative of other documents that Netflix produced. Pet. 5, 7 (citing Pet. App. 4a). The district court, however, specifically found that the documents Netflix produced were "binding" and controlled over the VSP claims administration agreement. Pet. App. 71a. Zavislak identifies no court that requires the disclosure of documents that merely duplicate binding documents that have already been produced. See, *e.g.*, *Weinstein*, 107 F.3d at 145 ("The mere presence of a description of rights or obligations that are established elsewhere does not make the descriptive document an 'instrument under which' the plan is operated.") (alteration marks omitted).

Respectfully submitted.

CHRISTOPHER J. RILLO
CATHERINE SCOTT
BAKER BOTTS L.L.P.
101 California Street
Suite 3200
San Francisco, CA 94111
(415) 291-6200

AARON M. STREETT
Counsel of Record
CHRISTOPHER E. TUTUNJIAN
BAKER BOTTS L.L.P.
910 Louisiana Street
Houston, TX 77002
(713) 229-1234
aaron.streett@bakerbotts.com

Counsel for Respondent Netflix, Inc.

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