No. 25-498

In the Supreme Court of the United States

WINSTON R. ANDERSON, et al.,
Petitioners,

v.

INTEL CORPORATION INVESTMENT POLICY COMMITTEE, et al.,
Respondents.

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

BRIEF FOR PETITIONERS

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QUESTION PRESENTED

Under the Employee Retirement Income Security Act of 1974 (ERISA), a plan fiduciary is subject to a "[p]rudent man standard of care," which requires the fiduciary to "discharge his duties with respect to a plan" with the "care, skill, prudence, and diligence" that a prudent person "acting in a like capacity and familiar with such matters would use." 29 U.S.C. § 1104(a)(1). As this Court has recognized, a court's inquiry into whether a plaintiff has adequately alleged that a fiduciary breached ERISA's duty of prudence "will necessarily be context specific" because the content of that duty "turns on 'the circumstances … prevailing' at the time the fiduciary acts." *Fifth Third Bancorp. v. Dudenhoeffer*, 573 U.S. 409, 425 (2014) (quoting 29 U.S.C. § 1104(a)(1)(B)). As a result, "categorical" pleading rules are "inconsistent with the context-specific inquiry that ERISA requires." *Hughes v. Nw. Univ.*, 595 U.S. 170, 173 (2022).

The question presented is: Whether, for claims predicated on fund underperformance, pleading that an ERISA fiduciary failed to use the requisite "care, skill, prudence, or diligence" under the circumstances and thus breached ERISA's duty of prudence when investing plan assets requires alleging a "meaningful benchmark."

PARTIES TO THE PROCEEDING

Petitioners Winston R. Anderson and Christopher M. Sulyma were the plaintiffs-appellants below.

Respondents Intel Corporation (NASDAQ: INTC) Investment Policy Committee, Intel Retirement Plans Administrative Committee, Finance Committee of the Intel Corporation Board of Directors, Christopher C. Geczy, Ravi Jacobs, David S. Pottruck, Arvind Sodhani, Richard Taylor, Terra Castaldi, Ronald D. Dickel, Tiffany Doon Silva, Tami Graham, Cary Klafter, Stuart Odell, Charlene Barshefsky, Susan L. Decker, John J. Donahue, Reed H. Hundt, James D. Plummer, Frank D. Yeary, Stacy Smith, Robert H. Swan, Todd Underwood, and George S. Davis were defendants-appellees below.

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INTRODUCTION

This case involves a challenge to the decision-making process that led the fiduciaries of Intel's two main retirement plans to adopt—and then maintain for years—an unprecedented investment strategy that allocated billions of dollars in plan assets to poorly performing and costly investments.

For both plans, Intel's fiduciaries created their own bespoke funds and made them the default investment for participants. And for both plans, the fiduciaries designed the default funds so they would be heavily allocated in nontraditional assets like hedge funds and private equity—even as they marketed them using conventional labels ("target-date funds" and a "balanced fund"). Intel was an extreme outlier in this respect: About a third of each default fund was invested in these assets. None of the target-date funds or balanced funds offered by major providers came anywhere close.

Why everyone else shied away from these asset allocations is no mystery. Hedge funds and private equity, though useful for certain investors, make little sense as a dominant part of a typical retirement fund because they are illiquid, costly, and opaque. Even as a hedge against market volatility, traditional bonds are a better bet. Which is why federal agencies, financial experts, and published reports have all cautioned against allocating particularly large portions of a retirement portfolio to them.

Intel's fiduciaries alone refused to heed these warnings. Year after year, the fiduciaries continued to make huge bets in hedge funds and private equity for their default funds—even as they lagged behind other target-date and balanced funds.

After years of poor performance, two Intel employees brought suit under the Employee Retirement Income Security Act. They allege that Intel's fiduciaries, in choosing and retaining these funds as the default funds, violated ERISA's duty of prudence. In support, they filed a 161-page complaint accompanied by two expert reports.

The complaint lays out in detail why imprudence can be inferred from a combination of factual allegations. Many of the allegations have nothing to do with how the investments performed—for example, the fact that Intel was an extreme outlier in allocating so much of its default funds in nontraditional assets, and that its allocations contradicted regulators' advice and prevailing wisdom.

But the complaint also alleges that the investment strategy that was seen as a poor choice for retirement assets in fact turned out to be a poor choice. It alleges that Intel's fiduciaries' investments in nontraditional assets performed worse than their investments in traditional ones. And it alleges that Intel's default funds also underperformed funds and indices that were identified as relevant comparators by experts, and as relevant benchmarks by that Intel's fiduciaries themselves.

Despite these allegations, the Ninth Circuit held that the plaintiffs failed to state a claim. In doing so, however, it did not do what this Court's precedents require. It did not ask whether *all* the well-pleaded factual allegations in the complaint, when taken together and accepted as true, give rise to a plausible inference of imprudence. *See Tellabs, Inc. v. Makor Issues & Rights*, 551 U.S. 308, 326 (2007).

Instead, the Ninth Circuit—citing a trio of Eighth Circuit cases—adopted a categorical pleading rule for imprudence claims that are supported by allegations of how the funds performed. Under that rule, a court must

go hunting through the complaint for something called a "meaningful benchmark"—that is, a better-performing fund that had "similar objectives," "similar risks," and similar "potential rewards" to the challenged funds. Pet.App. 12a-14a. If the court cannot find such a fund, it must disregard all the complaint's performance allegations, even if they are well-pleaded.

This Court should reject this judge-made "meaningful benchmark" requirement for three independent reasons.

First, it is atextual. ERISA does not include any such requirement. Nor does it require that allegations be pleaded with particularity. Although the Ninth Circuit claimed that the requirement is "implicit in ERISA's text," Pet.App. 12a, it did so based on a reading of the statute that contradicts this Court's decision in *Fifth Third Bancorp v. Dudenhoeffer*, 573 U.S. 409, 420 (2014).

Second, it is inconsistent with ordinary pleading rules. Under the ordinary rules, courts may disregard factual allegations only if they are really "legal conclusions" masquerading as facts. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Everything else must be taken as true and evaluated "as a whole" to assess whether the complaint "plausibly allege[s] a violation of the duty of prudence." *Hughes v. Nw. Univ.*, 595 U.S. 170, 177 (2022). By adding a new inquiry for one type of allegation, the "meaningful benchmark" requirement contravenes these precedents.

Third, it is a particularly misguided attempt to short-circuit the ordinary rules. The requirement is a poor proxy for imprudence. It ignores even benchmarks that the fiduciaries themselves have identified as relevant, and it perversely becomes more difficult to satisfy when fiduciaries make more imprudent departures from the norms. The requirement is also difficult for courts to administer. It enlists courts to determine, at the very

start of a case, when two funds are "similar" in objectives, risks, and rewards, but not similar in results. And the requirement serves no legitimate purpose that is not already served by the ordinary rules. It is, in short, a solution in search of a problem. Only here, the solution *is* the problem.

Because the Ninth Circuit did not conduct the right analysis, this Court should "vacate the judgment below so that the court may reevaluate the allegations as a whole" to determine if they "plausibly allege[] a violation of the duty of prudence." *Hughes*, 595 U.S. at 177.[1]

OPINIONS BELOW

The Ninth Circuit's opinion is reported at 137 F.4th 1015 (9th Cir. 2025). Pet.App. 1a. The district court's order granting the defendant's motion to dismiss Counts I-VI is reported at *Anderson v. Intel Corp. Inv. Policy Comm.*, 579 F. Supp. 3d 1133 (N.D. Cal. 2022). Pet.App. 32a. The district court's subsequent order granting the parties' stipulation to dismiss Count VII of the plaintiffs' Amended Consolidated Complaint is not reported, but is reproduced at Pet.App. 33a.

JURISDICTION

The Ninth Circuit filed its opinion on May 22, 2025. On August 7, 2025, Justice Kagan extended the time to file a petition for certiorari to Sunday, October 19, 2025. On October 20, 2025, petitioners filed a timely petition for

[1] Unless otherwise specified, all internal quotation marks, emphases, alterations, and citations are omitted from quotations throughout.

certiorari, which the Court granted on January 16, 2026. The Court's jurisdiction rests on 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, 88 Stat. 829, as amended and codified at 29 U.S.C. § 1001 et seq., provides in relevant part:

> a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and … with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

29 U.S.C. § 1104(a)(1).

STATEMENT OF THE CASE

I. Legal background

A. ERISA's duty of prudence

Congress enacted ERISA to promote "the interests of employees and their beneficiaries" in employee benefit plans. 29 U.S.C. § 1001(a). Congress found that the "inadequacy" of existing management and investment standards "endangered" "the soundness and stability of plans." *Id.* It therefore designed the law to "safeguard" employees from abuse and mismanagement of the plans that invested their money for retirement. *Id.* It did so by "establishing standards of conduct … for fiduciaries" and

"by providing for appropriate remedies, sanctions, and ready access to the Federal courts." *Id.* § 1001(b).

To that end, ERISA codifies demanding fiduciary duties that impose "strict standards of trustee conduct… derived from the common law of trusts." *Dudenhoeffer*, 573 U.S. at 416 (quoting *Cent. States, Se. & Sw. Areas Pension Fund v. Cent. Transp., Inc.*, 472 U.S. 559, 570 (1985)).

One of those duties is the duty of prudence. *See* 29 U.S.C. § 1104(a)(1)(B). Under section 1104(a)(1)(B), a plan fiduciary is subject to the "[p]rudent man standard of care," which requires fiduciaries to act "with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims." *Id.*

The duty of prudence is one of "the highest [duties] known to the law" and lies at the heart of ERISA's protective framework. *Howard v. Shay*, 100 F.3d 1484, 1488 (9th Cir. 1996). There is, however, no "fixed formula … for determining whether a trustee has met th[is] standard of care." Bogert, *The Law of Trusts & Trustees* § 541 (3d ed. 2009); *see* Restatement (Third) of Trusts § 90. It is, instead, "necessarily … context specific," and requires courts to ask whether the fiduciary behaved as a "prudent man" would have behaved if acting in the same scenario. *Dudenhoeffer*, 573 U.S. at 425.

B. The judicially-created "meaningful benchmark" pleading requirement

1. Starting in 2018, the Eighth Circuit began crafting a new requirement for complaints alleging a breach of the duty of prudence. In *Meiners v. Wells Fargo & Co.*, a

plaintiff alleged that Wells Fargo's fiduciaries had breached ERISA's duty of prudence by offering poorly performing and expensive Wells Fargo funds as investment options. 898 F.3d 820, 821 (8th Cir. 2018). To support the allegation of underperformance, the complaint pleaded "only" that one alternative fund was "comparable"—and that it had "performed better" and was less expensive. It did not provide any factual allegations to explain why the proposed comparator was appropriate. *Id.* at 823.

The Eighth Circuit dismissed the complaint. It held that, where a complaint relies exclusively on the use of a comparator fund to state an imprudence claim, the "plaintiff must provide a sound basis for comparison—a meaningful benchmark." *Id.* at 822. Although the court did not define the phrase "meaningful benchmark," it ruled that the plaintiff's comparator was insufficiently "similar[]." *Id.* at 823. Turning to the underperformance allegation, the court rejected the comparator because it had a "different investment strategy" and lower "allocation of bonds." *Id.* at 822 & n.2. Considering the cost allegation, the court ruled that a "meaningful benchmark" could not be met "by alleging that cheaper alternative investments with *some* similarities exist in the marketplace," but instead by identifying "different shares of the *same fund*." *Id.* at 823.

In two later cases, the Eighth Circuit expanded on the "meaningful benchmark" requirement. *See Davis v. Washington Univ. in St. Louis*, 960 F.3d 478 (8th Cir. 2020); *Matousek v. MidAm. Energy Co.*, 51 F.4th 274 (8th Cir. 2022). The plaintiffs had alleged that certain investment options that the fiduciaries offered plan participants had underperformed various alternative funds. The court assessed each of the complaints'

comparators one by one to determine whether any were similar enough to count as a "meaningful benchmark." If not, the comparator was rejected, and the corresponding allegation of underperformance was disregarded. *See Davis*, 960 F.3d at 484-87; *Matousek*, 51 F.4th at 280-82. Because these complaints contained no other factual allegations from which a court could infer imprudence, the claims were dismissed. *See id.*

With each case, the Eighth Circuit added additional criteria to its "meaningful benchmark" requirement. In *Davis*, the court explained that any proposed comparator would be insufficient if it had "different aims, different risks, [] different potential rewards," or different asset allocations. 960 F.3d at 485-86 (rejecting a comparator with "some similarities" because it had a "lower percentage" of one asset class). In *Matousek*, the court held that, to be "meaningful," a complaint had to "make a like-for-like comparison," which it construed as meaning a fund that "hold[s] similar securities, ha[s] similar investment strategies, and reflect[s] a similar risk profile." 51 F.4th at 279, 281; *see also id.* at 282 (meaningful benchmark requires the same "risk profile, return objectives, and management approaches").

Ultimately, under the Eighth Circuit's "meaningful benchmark" test, a comparator needs (at least) "similar hold[ings]," "similar risk profiles," similar "return objectives," and "similar investment strategies" and "management approaches." *Matousek*, 51 F.4th at 281-82. Differences on any of these fronts—or even just missing allegations about these details, *see id.* at 281—will result in a court disregarding the performance-related allegations.

As discussed below, the Ninth Circuit in this case explicitly aligned itself with the Eighth Circuit in

adopting the "meaningful benchmark" pleading requirement. *See* Pet.App. 11a-12a, 14a. Relying on the Eighth Circuit decisions, it held that a complaint containing performance-based allegations must identify a "meaningful benchmark"—that is, a better-performing investment with "similar objectives," "similar risks," and similar "potential rewards." Pet.App. 12a-14a (citing *Meiners*, *Davis*, and *Matousek*). Applying this test, the Ninth Circuit ruled that, in the absence of such a comparison, a court must disregard allegations related to "the performance of the investments" when assessing whether the complaint states an imprudence claim. Pet.App. 14a-15a.

Building off the Eighth Circuit's definition, two other circuits have applied a similar test, but limited it to allegations related to higher fees. In *Albert v. Oshkosh Corp.*, for example, the Seventh Circuit dismissed a complaint alleging that the plan paid "unreasonably high fees for recordkeeping and administration" because it was supported only by "threadbare" allegations of "materially similar and less expensive alternatives." 47 F.4th 570, 573, 582 (7th Cir. 2022). And the Tenth Circuit has explicitly adopted the "pleading burden articulated by the Eighth Circuit in *Meiners*"—but only for claims "rais[ing] an inference of imprudence through price disparity." *Matney v. Barrick Gold of N. Am.*, 80 F.4th 1136, 1148 (10th Cir. 2023).

2. Some courts have declined to adopt such specific pleading requirements. The Sixth Circuit has refused to impose a rule that, in every case that includes performance-related allegations, a plaintiff must "point to a higher-performing fund to demonstrate imprudence." *Johnson v. Parker-Hannifin Corp.*, 122 F.4th 205, 216 (6th Cir. 2024). Although benchmark allegations

indicating poor performance may provide a helpful "building block" to "demonstrate imprudence," such comparisons are not "always necessary." *Id.* (citing *Smith v. CommonSpirit Health*, 37 F.4th 1160, 1167 (6th Cir. 2022)). Instead, performance-related allegations must be "taken together" along with other allegations to assess whether they "sufficiently state a claim for imprudence under ERISA." *Id.* at 216.

The Sixth Circuit has also disagreed with the Eighth Circuit's definition of a "meaningful benchmark." *Id.* at 216 (rejecting a definition that would require identifying a fund with the same "risk profile," asset allocation, and "investment strategy"). Instead, it has explained that "context-specific evidence" matters. *Id.* Where, for instance, a complaint alleges that a challenged fund was "expressly structured to meet an industry benchmark," relying on "the relevant industry-accepted" benchmark as a comparator can be meaningful. *Id.* at 217; *see also Braden v. Wal-mart Stores, Inc.*, 588 F.3d 585, 595-96 (8th Cir. 2009) (recognizing that "market indices" may provide sufficient comparisons where the challenged fund was "designed to track" them).

The Third Circuit likewise has refused to adopt the Eighth Circuit's test, even as to cost allegations (rather than underperformance ones). In *Mator v. Wesco Distribution, Inc.*, the court recognized that even "imperfect" comparisons can support an inference of imprudence. 102 F.4th 172, 181 (3d Cir. 2024). Benchmarks that include some "differences," the court held, will not necessarily "scuttle the comparisons or the complaint." *Id*at 185. A complaint "should not be parsed

piece by piece to determine whether each allegation, in isolation, is plausible." *Id.* at 190.

II. Factual background

What follows is a detailed description of the plaintiffs' allegations of imprudence in this case, drawn from the complaint. The picture that emerges is clear: Over the relevant period, the fiduciaries created default funds for both plans that were highly unusual and contrary to prevailing financial advice—heavily allocating participants' retirement savings to costly and illiquid investments like private equity and hedge funds. Federal regulators had specifically warned against over-investing in these assets, and no other peer fiduciaries of defined-contribution plans did anything close for default retirement investments. And, although Intel's fiduciaries claimed that the chosen investment strategy would act as a hedge against market volatility, studies and real-world data indicated that hedge funds produced worse returns at a higher cost than even ordinary bonds, without mitigating risk any better. The Intel fiduciaries' strategy was such an outlier that financial commentators likened it to "institutional gambling."

And the gamble didn't pay off: Intel's funds underperformed virtually every relevant benchmark, including the very ones that Intel's fiduciaries identified as relevant comparators. Still, Intel's fiduciaries stuck to this strategy even after years of poor performance. JA181, 207-10, 221-23; *see also* JA672-73. All told, the default investments cost employees dearly, causing

hundreds of millions of dollars in lost retirement assets. JA91-94; *see also* JA64-65.

A. Intel's fiduciaries create custom funds for their employees' retirement savings.

This case involves two employer-sponsored, defined-contribution retirement plans governed by ERISA. JA40. One, the "Retirement Contribution Plan," was "funded by Intel contributions," and the other, the "401(k) Savings Plan," was "funded by employee contributions and non-matching discretionary employer contributions." JA428. Ultimately, "the value" of employees' retirement benefits is "determined by the market performance of employee and employer contributions, less expenses." *Tibble v. Edison Int'l*, 575 U.S. 523, 525 (2015); *see also* JA11.

These two plans offered two core investment options: The first was a balanced fund that they called the "Global Diversified Fund" (or GDF); the second was a series of target-date funds (or TDFs). The GDF was the default—and for many years the only—means by which employees could invest savings in the Retirement Contribution Plan. JA54, 102-03, 273-74. Similarly, unless employees opted out and selected an alternative, their savings in their 401(k) Savings Plan were invested in the TDFs by default. *Id.*

The GDF. Intel's fiduciaries characterized the GDF as a "balanced investment fund[]." JA337, 455. A balanced fund is a common investment portfolio that contains a mix of stocks and bonds, traditionally at a 60/40 ratio. JA11-12, 64. Intel's GDF, like other balanced funds, held a mix of investments. The fund invested in a range of asset

classes, and had a "static allocation" model, meaning that its asset allocation did not change over time. JA64.

The TDFs. Intel's TDFs were different. The fiduciaries described investing in TDFs as a good way to address employees' changing goals as retirement nears. TDFs do this by automatically adjusting their holdings over time from "higher-risk assets, such as stocks," to "lower risk investments, such as bonds and stable value." JA197, 455; *see* JA994. This planned, gradual change in asset-allocation is commonly referred to as a "glide path." JA120, 994-95.

TDFs are not unique to Intel's plans. They are a ubiquitous and "popular investment option in 401(k) plans." JA993. And, like other fund providers, Intel's fiduciaries offered their TDFs in "vintages" that correspond to the retirement age for which they were created. So, an employee planning to retire in 2030 would invest in the "Target-2030" TDF. JA12.

Intel's custom offerings. There is a competitive marketplace for retirement-plan investment vehicles, including TDFs and balanced funds. JA1019-20, 1028-29. When deciding which funds to offer employees, plan fiduciaries—especially those responsible for large-size retirement plans—can purchase off-the-shelf funds that have been created and managed by professional asset managers. *See id.* There are funds available from major, well-respected providers (like Vanguard, Fidelity, and T. Rowe Price), as well as additional offerings from providers with smaller market share. *See* JA1029-30.

Instead of offering existing funds from the marketplace, Intel's fiduciaries chose to create their own custom-made funds, and to select them as the default funds for employees. JA11-13. The fiduciaries "developed, chose, and managed" the funds' bespoke

"asset allocation model[s]," which determined what percentage of employees' investments would be apportioned to each class of assets. JA13-14.

B. Intel's fiduciaries adopt an unprecedented investment strategy.

1. The fiduciaries decide to increase allocations to hedge funds and private equity. Starting in 2009, Intel's fiduciaries altered the asset allocation for employees' retirement plans. JA57-59. Before, the funds had allocated relatively small amounts of participants' investments—roughly 6% for the GDFs—to private equity, hedge funds, and commodities. JA57-58. But the fiduciaries "dramatically increas[ed]" the funds' allocation to these investments and decreased the funds' allocations to traditional investments like domestic equities and bonds. JA57-59.[2]

The changes were stark. From 2009 to 2013, Intel's fiduciaries increased the GDF's dollar-value allocation to hedge funds, private equity, and commodities more than tenfold—from $214 million to approximately $2.4 billion. JA57-59. By 2011, those investments represented 33% of the GDF's total assets *Id.* And by 2013, that proportion had grown to over 36%. *Id.*

Intel's fiduciaries took a similar approach with the TDFs. From 2009 to 2011, they increased the 401(k) plan's dollar-value allocation to hedge funds from $1 million to $680 million. JA166-68. By 2011, investments in

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[2] The fiduciaries invested the plans' assets in many of the same hedge funds and private equity firms that Intel partnered with through the company's venture investment arm (Intel Capital). JA153-60.

hedge funds and commodities represented 23% of the TDFs' assets. JA58-59.

In adopting these new asset-allocations strategies, the fiduciaries identified their main "objective" as "improv[ing] the likelihood of long-term income replacement in retirement." JA560. They claimed that the "somewhat unique" allocation to "hedge funds and private investments" might offer "excess return opportunities relative to public markets." *Id.* Because these "alternatives" have "low correlations to equity," they were included with the goal of "allowing the portfolios to perform well in different market environments" and "contribute to investment returns over time." JA1009.

2. The fiduciaries' investment approach is an outlier in the marketplace. This allocation approach was highly unusual. Other major TDFs and balanced funds invested very little, if any, assets in hedge funds, private equity, commodities, or other nontraditional asset classes.

The GDF. Most major providers of balanced funds, like Vanguard and T. Rowe Price, allocated *no* assets to hedge funds or private equity. JA121-22. On average, balanced funds with investments in global equities and bonds—like Intel's GDF—allocated only 4% to nontraditional investments. JA277-78. Intel's GDF, by contrast, allocated around 35% to them—a nearly nine-fold increase. JA57-58, 277-78.

The TDFs. Intel's TDFs were similarly out of step. For instance, by September 2015, the 2035 TDF allocated nearly 21% of its assets to hedge funds, and, in total, over 32% to nontraditional investments (which included hedge funds, private equity, and commodities). JA120-21. Two years later, these positions had receded slightly but were still substantial: 14% to hedge funds, and 29% to

nontraditional investments. JA120-22. By contrast, 2035 TDFs offered by major providers allocated *no* assets to hedge funds in 2017. JA121-22. This held true across vintage years. *See* JA273-74 (noting that, in 2014, the Intel TDFs' percent allocation to nontraditional investments was approximately ten times greater than that of the median TDF of the same vintage).

And the fiduciaries' allocation strategy was no more common even years later. Out of 51 target date series analyzed in 2018, only eight allocated *any* assets to nontraditional investments—and only one allocation exceeded 7%. JA121-22 (citing JA1069-70).

3. Numerous warning signs revealed the danger of the Intel fiduciaries' strategy. The fiduciaries adopted their asset-allocation strategy despite a host of contemporaneous warning signs. Federal regulators, financial experts, investment professionals, available data, and published reports all suggested caution at the same time the fiduciaries bet so heavily on hedge funds and private equity.

a. Federal regulators' warnings

Since 2008, federal regulators repeatedly warned fiduciaries that—because of the lack of transparency, valuation risk, and costly fee structures—investments in hedge funds and private equities posed more risks and imposed higher costs than traditional investments. *See* JA123-50. In a series of reports and guidance letters, regulators explained the core risks of over-concentrating retirement plan assets in these investments.

In particular, hedge funds lack the transparency of other regulated investment markets because they are not obligated to disclose their holdings, strategies, or returns. *See* JA123, 134-36, 172-73. Hedge funds employ complex

strategies that are often secret "by design." JA123, 140. This lack of transparency makes hedge funds difficult to value. *Id.*; JA134-36. The same goes for private equity. JA149-51. The Securities and Exchange Commission, for example, found that private-equity firms sometimes value their portfolio with a "methodology that is different from the one that has been disclosed to investors." JA149.

Private-equity firms and hedge funds also demand high fees that reduce the returns realized by investors. *Id.* Managers in both industries are typically paid under the "two and twenty" model—a fee of 2% of the assets under management plus a fee of 20% of the profits generated by the investments. JA133,137-39. The 2% fee is up to ten times higher than the average fees for retirement plan investments. JA138.

Given these "unique characteristics," the Department of Labor has cautioned (even as recently as 2020) that plan fiduciaries assessing an investment vehicle with an allocation to private equity "should consider" whether that allocation has been adequately "limited." JA987. The Department even suggested that fiduciaries consider following the SEC's longstanding "15% limitation on illiquid investments." JA988 & n.8. And it noted that existing mutual funds and TDFs invested in private equity "only in very low allocations." *Id.*

b. Contemporaneous data and studies

Contemporaneous empirical evidence also suggested that hedge fund investments generated lower returns without any corresponding decrease in risk. According to data available in 2011, for instance, hedge-fund investments failed to provide higher returns or mitigate risk better than traditional investments in equity or bonds. JA112-14, 280-85. In an up market, when equity performed well, hedge-fund returns did not grow

"anywhere near as much." JA113. And, in a down market, hedge funds did not sufficiently outperform equity "to compensate for the opportunity losses" from the up market. *Id.* They are, in other words, "a poor diversifier relative to simple bond market investment." JA113, 282.

Publications from the time echoed the conclusion that hedge funds underperform traditional investments in both risk and return. A 2009 study in the Journal of Financial Economics, for instance, found that hedge funds performed worse than traditional equity investments and only slightly better than theoretical investments with no risk of financial loss. JA174 ("[T]he real alpha of hedge fund investors is close to zero" because "returns were reliably lower than the S&P 500 index, and [we]re only marginally higher than the risk-free rate as of the end of 2008."). From 1998 to 2010, "the effective return to hedge-fund clients has been only 2.1% a year, half the return they could have achieved by investing in boring old Treasury bills." JA179.

Hedge fund performance surrounding the 2008 financial crisis told the same story. During the crisis, hedge fund returns declined less than the equity indices did—but hedge funds hardly outperformed a traditional 60/40 equity/bonds portfolio. JA176-77. The following year, however, hedge funds were outperformed by both the equity indices *and* the 60/40 Portfolio. *Id.*

c. Investment professionals' reactions

Financial experts also reacted negatively to the Intel fiduciaries' disproportionate allocations. One financial analyst described the Intel fiduciaries as having "embarked, essentially, on an experiment with nearly $14 billion in worker retirement money for more than 63,000 participants." JA59. Another observed in early 2014 that Intel's plans "have been infiltrated with hedge funds,"

and that the fiduciaries' investment strategy amounted to "institutional gambling with employees['] assets." *Id.*

C. Intel's fiduciaries' unusual strategy led the funds to regularly underperform a wide range of internal and external benchmarks.

As the complaint details, the fiduciaries' strategy of high allocations to nontraditional investments like hedge funds and private equity caused the Intel retirement funds to underperform virtually every relevant comparative metric available.

1. For starters, Intel's nontraditional asset classes underperformed Intel's own accounts holding more traditional asset classes—like equities and bonds. JA163-65, 188-89. For example, in 2014, the nontraditional category accounted for only 22% of the plans' net gain, despite holding over 43% of the plans' assets. JA163. Overall, as the complaint detailed, from 2011 to 2017, although between 37% and 42% of Intel's assets were in nontraditional investments, those investments "consistently" generated "significantly less than 37%" of the plans' net gains. *Id.* This result repeated across various market conditions. JA163-65 (explaining that, in 2015, when the traditional investments lost $13 million, the nontraditional investments failed to cushion the fall but instead contributed to it, losing $93 million, and accounting for over 87% of the net loss).

2. Intel's funds—again, as the complaint lays out—also underperformed relative to a series of specific market indices, alternative funds, and other benchmarks that both the fiduciaries themselves and experts in investment management identified as relevant

comparators. JA62-63, 79-80, 93-99, 240-42, 246-47, 265-66.

For instance, the complaint includes detailed allegations explaining that Intel's funds underperformed the very benchmarks that the Intel fiduciaries themselves noted as comparators—for both the GDF and TDFs. JA93-99. Intel's fiduciaries identified relevant benchmarks for the plan's GDF and TDFs in numerous documents, including "fact sheets" prepared by Morningstar (a leading provider of investment data).[3] JA61-65, 240-42; *see, e.g.*, 68 n.11, 93-94, 97-98, 247-48, 250-51, JA576-719. These documents expressly compared the performance of Intel's funds to industry metrics and other funds.[4]

For the GDF, that included the MSCI World index—a global stock index, JA93-94—which the fiduciaries explicitly described as a "benchmark" for the GDF. JA93-94; *see, e.g.*, JA629. Intel's GDF regularly underperformed this benchmark, including over the five-

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[3] Morningstar creates and publishes "categories" of "peer funds" by considering "stated investment style and objectives," "actual investments and asset allocations," fund manager classifications, and other financial metrics. JA62, 265-66. As the complaint details, experts confirmed that these categories are appropriate and "widely used for benchmarking" by investment professionals. JA61-62, 246-47, 266.

[4] Intel's fiduciaries also created what they called "custom" benchmarks for these funds, which were "composite" metrics constructed from various industry indices. *See, e.g.*, JA603-05, 637-38, 676. Although these tailored benchmarks purported to reflect the same asset-allocation approach as the funds, experts reviewing them noted that they were "not replicated in any public data set" that would permit them to be used effectively in the complaint. JA93, 274.

year period ending in 2014 and the ten-year period ending in 2018. JA96.

It also included funds from the Morningstar category "World Allocation" and another called "Balanced/Hybrid Funds—International Growth." JA94, 250. The returns from Intel's GDF were regularly lower than both the median fund returns and the vast majority of the largest funds in the "World Allocation" category. JA276-77. Intel's GDF also consistently underperformed the three funds in the "Balanced/Hybrid Funds" category offered by major providers. JA98-99, 277-78.

The complaint also includes an expert opinion that an additional index was even more comparable than those the fiduciaries identified. JA274-75. Because of the Intel funds' shift between 2007 and 2011 from global equities to other strategies such as hedge funds, the GDF was more akin to Morningstar's "Global Allocation" index. JA93-94, 274-75. The GDF consistently underperformed that index too. *Id.*

For the TDFs, the fiduciaries compared it with other TDFs of the same vintage year.[5] *See, e.g.*, JA644, 647, 650-52, 654-55; *see also* 671-719. For example, a 2015 fact sheet for Intel's 2035 TDF described its "Morningstar Category" as "Target Date 2031-2035." JA671. The fact sheet also gave Intel's 2030 TDF an "Overall Morningstar

[5] As the complaint alleges, it is common practice for investment professionals to compare TDFs with other TDFs of the same (or similar) vintage years. JA62-63, 246-47. That's because TDFs "share" important "goals and features"—they're "long-term investment vehicle[s]" that invest in a mix of asset classes, and reallocate those investments according to "glidepath[s]" that decrease risk as the vintage year approaches. JA62-63.

Rating" (two out of five stars) based on a comparison with the 224 funds in the category. *Id.*

Across Intel's entire lineup of TDFs, the Intel fund performed worse than the median fund in the corresponding Morningstar category. JA82. This was true over various time horizons, including the ten-year period ending in December 2018. JA82-83, 270-71. What's more, Intel's TDFs didn't just generate worse returns, on an absolute basis, than TDFs of the same vintage year. As the complaint details, the Intel TDFs also "performed poorly" "on a risk-adjusted basis" from 2012 to 2017. JA92-93.[6]

3. At the same time as Intel's funds were consistently underperforming, they charged very high fees. For example, the average Intel TDF fee was higher than 44 out of 58 sets of TDFs covered by a 2018 Morningstar report. JA79. The only funds that charged more than Intel's had small market shares. And for large retirement-plan investors, Intel's TDFs were some of the most expensive in the country. JA79-80. The sixteen defined-contribution plans closest in size to Intel's charged substantially lower fees. *Id.* Intel's TDFs charged fees more than twice as high as the TDFs that these other large plans invested in—often, even more than ten times as high. JA79-82.

III. Procedural history

This case was originally brought by Christopher Sulyma, a former Intel employee and participant in both

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[6] Generally, "an investor would prefer to take less risk to generate the same return." JA93. "Risk-adjusted returns"—which measure an investment's profitability relative to the degree of risk taken to achieve it—capture both sides of the equation. *See id.*

Intel's 401(k) plan and its retirement plan. Pet.App. 40a-41a. Sulyma filed this case in 2015, challenging the Intel fiduciaries' mismanagement of these plans and their breaches of ERISA's fiduciary duties. *Id.* The district court initially granted summary judgment for the plan fiduciaries on the theory that Sulyma's claims were barred by ERISA's statute of limitations. Pet.App. 43a. The Ninth Circuit reversed, and this Court affirmed. *Intel Corp. Inv. Pol'y Comm. v. Sulyma*, 589 U.S. 178 (2020).

While *Sulyma* was on appeal, Winston Anderson, a former Intel employee, sued raising similar claims. Pet.App. 43a. His case was stayed pending this Court's decision, and the cases were then consolidated. Pet.App. 43a-44a.

District Court. On remand, the Intel fiduciaries moved to dismiss the consolidated complaint, and the district court granted the motion. *Anderson v. Intel Corp. Inv. Pol'y Comm.*, 2021 WL 229235 (N.D. Cal. Jan. 21, 2021). Relying on the Eighth Circuit's "meaningful benchmark" rule, the court held that the complaint failed to identify "adequate benchmarks" that outperformed Intel's funds and dismissed the imprudence claim on that basis. *Id.* at *8.

In response, the plaintiffs filed a 161-page amended complaint. JA1-236. They added over 50 pages and two expert declarations to the prior complaint. JA238-53 (Halpern Decl.); JA254-62 (Pomeranz Decl.). The amended complaint alleges Intel's fiduciaries breached their duty of prudence by initially selecting and then continuing to offer, as default investments in Intel's retirement plans, funds with massive allocations to hedge funds, private equity, and commodities. JA200-29. The complaint does not claim that it was *per se* imprudent for

the fiduciaries to include *any* hedge funds or private equity investments in their funds; rather, it challenges the funds' unprecedented allocation of assets to these types of investments.

The complaint alleges that the fiduciaries' imprudence could be inferred from a combination of factual allegations. These include: (1) the funds' highly unusual asset allocations that made them outliers in the market—no other peer fund had adopted anything close to the Intel fiduciaries' strategy, *see, e.g.*, JA57-59, 120-22; (2) the contemporaneous warnings signs—from government regulators, available data and reports, and financial commentators—that funds with substantial allocations to hedge funds and similar investments were a bad idea for retirement plans, *see, e.g.*, JA59, 123-50, 167-79; (3) the fact that Intel's early and substantial investments in nontraditional assets, like hedge funds, underperformed its investments in traditional ones (even in 2011), *see, e.g.*, 163-65; and, finally, (4) the underperformance of Intel's GDF and TDFs relative to alternative funds and industry indices that experts identified as relevant comparators and that Intel's fiduciaries themselves identified as relevant benchmarks, *see, e.g.*, JA68-104.

The fiduciaries again moved to dismiss, and the district court granted the motion. Pet.App. 33a-83a. The court once again relied on the Eighth Circuit's cases and held that a "meaningful benchmark" is required whenever plaintiffs make allegations about "a challenged fund's performance." Pet.App. 52a. The court then parsed the complaint's comparators, rejected all of them, and dismissed the complaint with prejudice. Pet.App. 54a-63a, 68a.

Ninth Circuit. The Ninth Circuit affirmed. It too embraced the Eighth Circuit's "meaningful benchmark"

requirement and adopted it as the rule of the circuit. Pet.App. 11a-12a. Citing the Eighth Circuit's case law, the court squarely held that, "to the extent a plaintiff asks a court to infer that a fiduciary used improper methods based on the performance of the investments"—even "in part"—the plaintiff "*must* compare that performance to funds or investments that are meaningfully similar." Pet.App. 14a-15a (emphasis added). If the plaintiff does not do so, then the performance allegations are disregarded.

The Ninth Circuit did not contend that this rule is expressly required by the text of ERISA or Federal Rule of Civil Procedure 8. It instead believed that this requirement is "implicit" in ERISA's text, Pet.App. 12a, because the statute requires a fiduciary to use the same level of skill, prudence, care, and diligence that "a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims." § 1104(a)(1)(B). The Ninth Circuit identified no other statutory support for this requirement. Nor did it attempt to square the requirement with this Court's precedents rejecting categorical pleading rules.

The Ninth Circuit also followed the Eighth Circuit in fleshing out the contours of the "meaningful benchmark" requirement. Pet.App. 14a (citing *Davis*, 960 F.3d at 485). Like the Eighth Circuit, the Ninth Circuit held that a plaintiff must identify a superior-performing investment that "actually existed," and had "similar objectives," "similar risks," and similar "potential rewards," to plead a "meaningful benchmark." Pet.App. 12a-14a, 18a.

The Ninth Circuit then applied that requirement to the complaint. It concluded that none of the comparators that the petitioners offered passed muster. *See* Pet.App.

14a, 18a-20a. The court thus disregarded the complaint's performance-based allegations in their entirety, without considering whether those allegations, "taken together" with the complaint's non-performance-based allegations, gave rise to a plausible inference of imprudence. *Contra Parker-Hannifin*, 122 F.4th at 216. With the performance-based allegations out of the picture, the court found the complaint lacking and affirmed dismissal.

Judge Berzon wrote separately to express her views. She noted that the "meaningful benchmark" requirement "championed by the district court and the majority opinion … originated in *Meiners*," the first in the Eighth Circuit's trio of meaningful-benchmark cases. Pet.App. 27a. And she thought that, if the plaintiffs in this case had come forward "[w]ith appropriate evidence, [they] could state a claim by pleading a true benchmark comparison." Pet.App. 31a. But because she agreed with the "majority opinion" that they had not done so, she joined it. She did not explain, however, how that opinion is consistent with her view that "*any* set of allegations which, taken as true and viewed in the plaintiffs' favor, plausibly support an inference that a fiduciary acted imprudently is sufficient at the pleading stage." *Id.*

This Court. After the Ninth Circuit's decision, this Court received a petition for certiorari in *Parker-Hannifin*. Because "the Ninth Circuit expressly sided with the Eighth Circuit[]" in "requiring a meaningful benchmark for this type of underperformance allegation," and the Sixth Circuit disagreed, the petitioners asked this Court to resolve the split. Petrs' Reply Br. at 4, *Parker-Hannifin Corp. v.* Johnson, No. 24-1030 (S. Ct. Dec. 23, 2025).

This Court then called for the views of the Solicitor General. In its brief, the government agreed with the

petitioners that the Sixth Circuit "create[d] a circuit split" with "both the Eighth and Ninth Circuits," which "clearly require[] a plaintiff to identify a comparator that exhibits the same strategies, objectives, and risks as the subject fund" in "evaluating relative-underperformance claims." U.S. Cert. Br. at 18, *Parker-Hannifin Corp. v. Johnson*, No. 24-1030 (S. Ct. Dec. 9, 2025). The government also agreed with the petitioners that such a requirement was correct.

Meanwhile, the petitioners in this case also sought certiorari. They too identified the split between the Sixth Circuit and the Eighth and Ninth Circuits. But naturally, they took a different position on the merits. This Court ultimately granted certiorari in this case to determine the propriety of the "meaningful benchmark" requirement.

SUMMARY OF ARGUMENT

I. This Court has repeatedly held that bright-line pleading rules are inappropriate when assessing whether a complaint has plausibly alleged a violation of ERISA's duty of prudence. *See Dudenhoeffer*, 573 U.S. at 420; *Hughes*, 595 U.S. at 173. That directive flows from ERISA's statutory duty of prudence, which requires a context-sensitive inquiry into the specific nature of the fiduciary duty and the circumstances prevailing at the time the fiduciary acts. It also flows from the fact that the "appropriate" inquiry is governed by "pleading standard as discussed in *Twombly* and *Iqbal*," *Dudenhoeffer*, 573 U.S. at 420, which requires that a court evaluate "the allegations as a whole." *Hughes*, 595 U.S. at 177. "Categorical rule[s]," in short, are "inconsistent with" the settled inquiry that "ERISA requires." *Id.* at 173.

Adhering to this approach is particularly important for duty-of-prudence claims. Not only does the content of the duty vary widely, but employees will often "lack the

inside information necessary to make out their claims in detail." *Braden*, 588 F.3d at 598. So the significance of any well-pleaded allegation—be it comparative, performance-based, or something else—is necessarily "context-specific." It depends on the theory of breach and whether, taken together with all the other allegations, it allows for a plausible inference of imprudence.

II. The Ninth Circuit discarded this holistic inquiry in favor of a categorical pleading rule first adopted by the Eighth Circuit. Under that rule, if a complaint seeks to support an imprudence claim with allegations about investment performance, those allegations (no matter what they say) must be supported with a "meaningful benchmark"—which the Ninth Circuit defined as a better-performing investment with "similar objectives," "similar risks," and similar "potential rewards." If the complaint does not identify such a comparator, none of its performance allegations may be considered—regardless of how detailed, nonconclusory, and contextually relevant they might be.

This pleading requirement contradicts the statutory text, the Federal Rules of Civil Procedure, and this Court's precedent interpreting both. Just as bad, it is also illogical, unworkable, and unnecessary. It is illogical because, like other inflexible rules, it is necessarily overinclusive—screening out relevant allegations. The requirement effectively immunizes fiduciaries who pursue reckless strategies, no matter how imprudent, so long as no other fiduciary follows suit. It is also unworkable, because courts will have to decide, as a matter of law, how close is close enough for a meaningful benchmark—a task that is especially challenging at the pleading stage. And ultimately, the requirement is

unnecessary because the ordinary rules already filter out complaints that fail the plausibility standard.

This Court should therefore reject the meaningful-benchmark requirement and vacate the Ninth Circuit's judgment for an assessment of whether all the allegations "taken as a whole" plausibly state a claim for relief.

ARGUMENT

I. A complaint adequately pleads a violation of ERISA's duty of prudence if all of its allegations—whether about fund performance or not—together give rise to a plausible inference that the fiduciaries acted imprudently.

A. ERISA requires that a fiduciary's decisions be judged against that of a hypothetical "prudent man" carrying out a similar "enterprise" and acting "under the circumstances then prevailing." 29 U.S.C. § 1104(a)(1)(B); *see Dudenhoeffer*, 573 U.S. at 420-21. The statute thus requires courts to ask whether the fiduciary behaved as a "prudent man" would have behaved if acting in the same scenario.

The prudent-man construct evolved from the common law of trusts. *See Cent. Transp.,* 472 U.S. at 570. Historically, trustees' investment decisions were judged either against statutory lists of permitted asset classes, or against a flexible prudent-man standard. Bogert § 613; *see, e.g.*, *King v. Talbot*, 40 N.Y. 76, 89-90 (1869) (holding that investments in common stock were per se imprudent); *Kinmonth v. Brigham*, 87 Mass. 270, 279-80 (1862) (similar, for a partnership); *see also Harvard Coll. v. Amory*, 26 Mass. 446, 460-61 (1830) (describing the prudent-man standard). Ultimately, trust law coalesced around "the prudent person rule." 3 Austin Wakeman Scott & William Franklin Fratcher, *The Law of Trusts* §

227.5, at 442 (4th ed. 1988). Under that rule, a trustee was to "conduct himself faithfully and exercise a sound discretion" in line with "how men of prudence, discretion and intelligence manage their own affairs." *Harvard Coll.*, 26 Mass. at 461.

With ERISA, Congress borrowed the same prudent-man construct, but changed the context from "manag[ing] [one's] own affairs" to managing a similar "enterprise." As Secretary of Labor George Schultz explained at a hearing on a predecessor of ERISA with similar language, the prudent-man "formula has a built-in flexibility to allow for fair judgments to be made whether the fiduciary is an individual administering a small plan with an uncomplicated portfolio or an institution administering a large plan with millions of dollars invested in many types of assets." Private Welfare and Pension Plan Legislation: Hearings on H.R. 1045, 1046, and 16462 Before the Gen. Subcomm. on Educ. and Lab. of the H. Comm on Lab., 91st Cong. 477 (1970) (statement of George P. Shultz, Sec'y, Dep't of Lab.).

What is prudent in one scenario may yet be imprudent in another, and vice versa. By requiring courts to assess prudence "under the circumstances then prevailing," ERISA requires them to take further account of the context in which the fiduciary acted. 29 U.S.C. § 1104(a)(1)(B). The statute, in other words, is all about context.

B. In light of the statute's flexibility, this Court has consistently rejected attempts to inject judicially crafted rules into the determination of whether a complaint's allegations plausibly allege that a fiduciary has violated the duty of prudence. "Categorical rule[s]," put simply,

are "inconsistent with the context-specific inquiry that ERISA requires." *Hughes*, 595 U.S. at 173.

That point was first made clear more than a decade ago in *Dudenhoeffer*. *See* 573 U.S. at 412. In that case, lower courts had "gone beyond ERISA's express provision[s]" and introduced what they called a "presumption of prudence." *Id.* at 417. This rule applied whenever an Employee Stock Ownership Plan "fiduciary's decision to buy or hold the employer's stock is challenged in court" and required a plaintiff to "make a showing" that "the employer was on the brink of collapse." *Id.* at 412. In developing this rule, lower courts had mandated specific types of factual allegations that were necessary to state a claim. *See id.* at 417 (describing the rule as requiring "allegations that clearly implicate the company's viability as an ongoing concern or show a precipitous decline in the employer's stock … combined with evidence that the company is on the brink of collapse or undergoing serious mismanagement").

This Court unanimously rejected such a "pleading stage" rule. *Id.* at 418. Creating special pleading rules as a matter of judicial policy, this Court explained, is not an "appropriate way to weed out meritless lawsuits"—or more colorfully put, to "readily divide the plausible sheep from the meritless goats." *Id.* at 425. Whatever their virtues, bright-line judge-made pleading rules are ultimately overinclusive, and thus improper. They "make[ ] it impossible" for even "meritorious" claims to proceed absent a specific type of allegation. *Id.* The "appropriate" inquiry "necessarily" involves "careful, context-sensitive scrutiny of a complaint's allegations," as

a whole, under the Rule 8 "pleading standard as discussed in *Twombly* and *Iqbal*." *Id.* at 426.

This Court reiterated the point a few years later in *Hughes*. *See* 595 U.S. at 173. There, the Seventh Circuit had adopted a special pleading rule for claims alleging that a fiduciary acted imprudently by "retaining recordkeepers that charged excessive fees, offering options likely to confuse investors, and neglecting to provide cheaper and otherwise-identical alternative investments." *Id.* at 176. The rule required "rejecting" allegations supporting the claim unless the plaintiffs also alleged that the fiduciary "did not make" the "types of funds plaintiffs wanted" available to them. *Id.* at 176-77 (noting the Seventh Circuit's view that, because the plaintiffs' "preferred type of investments were available, they could not complain about the flaws in other options").

The Seventh Circuit's "reasoning was flawed." *Id.* at 173. Courts facing a motion to dismiss must "[]evaluate the allegations as a whole" and "apply[] the pleading standard" in Rule 8 to determine whether the complaint "plausibly allege[s] a violation of the duty of prudence." *Id.* at 177. The Seventh Circuit's "reliance" on a "categorical" pleading rule—one that required dismissing factual allegations unless another specific allegation was included—was "inconsistent with the context-specific inquiry that ERISA requires." *Id.* at 173. This Court therefore vacated the Seventh Circuit's judgment and directed the court to "reevaluate the allegations as a whole." *Id.* at 177.

The Court has taken the same approach outside of ERISA. Just last term, the Court in *Berk v. Choy* observed that it has "consistently rejected efforts" to "require more information for certain kinds of claims" than what Rule 8 requires. 607 U.S. ----, 146 S. Ct. 546,

550, 553 (2026) (collecting cases). Because Rule 8(a)(2) "requires only a short and plain statement of the claim," it "sets a ceiling on the information that plaintiffs can be required to provide about the merits of their claims." *Id.* at 553-54. So, "unless the Federal Rules single out a claim for special treatment," rules "demand[ing] that plaintiffs plead certain [] claims with added specificity" must be rejected. *Id.*

This Court's decisions in *Twombly* and *Iqbal* reinforce that basic understanding. Those decisions provide a straightforward framework for assessing the sufficiency of a complaint's factual allegations; they also leave no room for the application of categorical rules. Specifically, a court facing a motion to dismiss under Rule 12(b)(6) must undertake a two-step inquiry. The court "begin[s]" by identifying allegations that are "no more than conclusions" of law—for example, "[t]hreadbare recitals of the elements of a cause of action supported by mere conclusory statements." *Iqbal*, 556 U.S. at 678-79; *see Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555-57 (2007). These allegations are "not entitled to the assumption of truth," so the court may set them aside. *Id.* at 679. Everything else then goes into the mix: The court takes what remains—the "well-pleaded factual allegations"—"assume[s] their veracity," and "determine[s] whether they plausibly give rise to an entitlement of relief." *Id.*

C. Adherence to this settled approach for assessing the sufficiency of a complaint's allegations is particularly important for ERISA duty-of-prudence claims. The content of the duty of prudence "encompasses a number of duties relating to the management and investment of the trust property." Bogert § 541. So evaluating whether a breach has occurred thus turns on both the specific "nature of the fiduciary duty," *Tibble*, 575 U.S. at 528, and

"the circumstances prevailing at the time the fiduciary acts." *Hughes*, 595 U.S. at 177.

It also will rarely be the case that a plaintiff has direct evidence of a breach. That's because the facts relating to a fiduciary's decision-making process "will frequently be in the exclusive possession of the breaching fiduciary." *Concha v. London*, 62 F.3d 1493, 1503 (9th Cir. 1995); *see also Braden*, 588 F.3d at 598 (noting that plan participants typically have "limited access" to this "crucial information" and "generally lack the inside information necessary to make out their claims in detail unless and until discovery commences"). "Circumstantial factual allegations" will thus frequently be the only way a plaintiff can support their claim. *Pension Ben. Guar. Corp. ex rel. St. Vincent Catholic Med. Cntr. v. Morgan Stanley Inv. Mgmt. Inc.*, 712 F.3d 705, 718 (2d Cir. 2013).

Assessing whether a plaintiff has "plausibly alleged a violation of the duty of prudence" will therefore "necessarily be context specific." *Hughes*, 595 U.S. at 177. For example, an allegation that fiduciaries performed no historical performance modeling before investing in certain funds may be highly relevant to plausibly stating a claim that fiduciaries acted imprudently by *selecting* those funds, but less so for a claim challenging a fiduciary's *retention* of those funds. *See, e.g.*, *Parker-Hannifin*, 122 F.4th at 225, 234 (Murphy, J., dissenting).

Context also matters for comparative allegations. If a plaintiff's theory of breach is that the fiduciaries chose to offer a higher-cost version of a specific investment product—like offering an expensive share class of a specific fund when lower cost classes of the same fund were available—then plausibly alleging that claim might involve identifying the otherwise similar, actually available, and cheaper option. *See Braden*, 588 F.3d at

595-96. But that won't always be the case. *See Mator*, 102 F.4th at 185, 187 (noting that some "differences" would "not scuttle" comparisons where they showed "stark" distinctions between recordkeeping fees); *Hughes v. Nw. Univ.*, 63 F.4th 615, 633 (7th Cir. 2023) (refusing to require the "plaintiffs to prove that another recordkeeper would have offered a lower fee" because doing so would be inconsistent with the "*Twombly* and *Iqbal* plausibility requirement").

If, on the other hand, the theory of breach focuses on a fiduciary's decision to over-allocate plan assets to certain highly risky asset classes, any relevant comparators might, almost by definition, involve material differences. *Cf. Cal. Ironworkers Field Pension Tr. v. Loomis Sayles & Co.*, 259 F.3d 1036, 1045 (9th Cir. 2001) (affirming judgment against fiduciaries where "nearly one third of the [plan's] total assets were invested" in a form of mortgage-backed security compared with two other plans that allocated "much smaller percentages" to the same risky investment).

Performance-related allegations are no different. Sometimes, the theory of breach won't require any comparison to make a performance allegation relevant. In *Dudenhoeffer*, for example, this Court credited—without requiring any comparator—a complaint's allegation that an investment option was "overvalued" and therefore underperformed when it "fell by 74%" and "eliminat[ed] a large part of the [participants'] retirement savings." 573 U.S. at 413-14. That allegation was used to support a claim that fiduciaries imprudently permitted participants to invest in employer stock instead of "different investment[s]." *Id.* at 418; *Tibble*, 575 U.S. at 530 (not requiring comparison for claim that fiduciary "fail[ed] to

properly monitor investments and remove imprudent ones").

In other cases, performance allegations that focus on the fiduciaries' or fund managers' own internal or external benchmarks for their chosen investment's performance might be relevant. *See, e.g.*, *Braden*, 588 F.3d at 595-96 (recognizing that "market indices" may support an allegation that the challenged fund "underperformed" where the fund was "designed to track" them); *Parker-Hannifin*, 122 F.4th at 210 (alleging that the fiduciaries' chosen funds underperformed the very benchmark they were "attempting to mimic").

And, in still other cases, a complaint might "fail[] to state a plausible claim" even though it includes a performance-related allegation. *Meiners*, 898 F.3d at 823. That might be true, for instance, where a complaint attempts to show that a plan's funds "were underperforming" by simply alleging that one other fund was "comparable" and "performed better" and requesting an inference of imprudence essentially on that basis alone. *Id.* (noting the "lack" of other "sufficient factual matter" to permit plausible inference of imprudence); *see also CommonSpirit*, 37 F.4th at 1167 (explaining that a fund's underperformance "may offer a building block for a claim of imprudence" but might not "suffice[] alone").

D. Although not necessary to decide the question presented, faithfully applying ERISA's "context-specific" approach shows why the allegations in the petitioners' complaint more than exceed what's required to plausibly state a claim. The complaint alleges that the fiduciaries' decision-making process was imprudent when they initially decided to allocate around one-third of

participants' retirement savings to hedge funds and private equity in their default investment options and when they maintained that allocation strategy for years—without removing the funds, replacing them as the defaults, or fundamentally altering their allocation approach.

To support this claim, the complaint includes specific and detailed factual allegations that, taken together, easily raise an inference of imprudence. For example, the complaint alleges that this strategy was an outlier among peer funds and fiduciaries, many of which allocated no assets to nontraditional investments. JA122. Indeed, federal regulators had warned against doing *exactly* what the fiduciaries did here—over-investing in these illiquid and costly vehicles (the SEC, for example, had a long-standing "15% limitation on illiquid investments"). *See* JA988 & n.8. And market analysts characterized the fiduciaries' novel approach as "institutional gambling with employees['] assets." JA59. Although the fiduciaries assured participants that their "somewhat unique" strategy was meant to "perform well in different market environments" and provide "excess return opportunities relative to public markets," JA560, 1009, the complaint alleges that past performance demonstrated that hedge funds provided worse returns at a higher cost than traditional bonds without mitigating risk any better, *see, e.g.*, JA174-77 (describing past performance including surrounding the 2008 financial crisis).

But the complaint's use of comparators to demonstrate the funds' poor performance added even more to the strength of the claim. It includes pages of allegations explaining in detail how and why the fiduciaries' asset-allocation strategy performed exceptionally poorly. First, the complaint alleges that,

within Intel's *own funds*, the nontraditional investments regularly and significantly underperformed their traditional counterparts. JA163-65. Second, the complaint alleges that Intel's funds underperformed the very benchmarks that the *fiduciaries themselves* identified as appropriate comparators. JA92-93, 671-74. Third, the complaint alleges that Intel's GDF and TDFs underperformed industry-standard benchmarks that actual investment experts identified as relevant. JA62-63, 92-94. Yet, despite this consistent underperformance, Intel's fiduciaries refused to adjust course.

Considered holistically, these allegations plausibly raise an inference of imprudence. No more is needed to "nudge[] their claim across the line from conceivable to plausible." *Twombly*, 550 U.S. at 570.

II. The Ninth Circuit's "meaningful benchmark" rule conflicts with ERISA's text, Rule 8, and precedent, and it is illogical and unworkable to boot.

Eschewing a holistic inquiry, the Ninth Circuit adopted the Eighth Circuit's categorical pleading rule for imprudence claims supported by allegations of how the investments performed. Under that rule, courts are prohibited from considering performance allegations unless the complaint identifies a "meaningful benchmark"—that is, a better-performing investment with "similar objectives," "similar risks," and similar "potential rewards." Pet.App. 12a-14a. If a complaint fails to identify such a comparator—for example, because it fails to convince the court that any comparator identified had a similar "risk profile, bond-to-equity ratio, and investment strategy," *Parker-Hannifin*, 122 F.4th at 218—none of the complaint's performance allegations

may be considered, no matter how detailed or non-conclusory they might be. *See* Pet.App. 12a-14a.

This Court should reject that rule. The rule finds no support in the statutory text, Rule 8, or precedent. It is "inconsistent with" ERISA's "context specific" approach. *Hughes*, 595 U.S. at 173. It is unworkable, because it forces courts to figure out what it means for an investment to be sufficiently "similar" in objectives, risks, and rewards—but not similar in results. It is also illogical: It ignores even benchmarks that the fiduciaries themselves identified as relevant, while immunizing even the most imprudent investments so long as they are sufficiently novel to defy comparison. And in the end, the rule serves no legitimate purpose that is not already served by the holistic inquiry.

A. The Ninth Circuit's "meaningful benchmark" rule contradicts the text of ERISA and Rule 8, and this Court's precedents interpreting them.

1. There is nothing in the text of ERISA that supports the Ninth Circuit's "meaningful benchmark" requirement. The phrase does not appear anywhere in the statute, and the Ninth Circuit did not suggest otherwise. It claimed only that the requirement is "implicit in ERISA's text," pointing to the statute's reference to "a hypothetical prudent person 'acting in a like capacity … in the conduct of an enterprise of a like character and with like aims." Pet.App. 12a (quoting § 1104(a)(1)(B)); *see also* U.S. Cert. Br. 19 (arguing similarly). The Ninth Circuit believed that this language requires plaintiffs to identify an alternative investment of "like character" and "like aims"—i.e., a fund with similar "risk-mitigation strategies and objectives"—as a

precondition to pleading allegations about how the investment performed. Pet.App. 12a-14a.

That is not what this language means, and this Court has already explained why. The statute makes clear that it is the "enterprise" that must be "of a like character and with like aims." § 1104(a)(1)(B). As the Court held in *Dudenhoeffer*: "Taken in context, § 1104(a)(1)(B)'s reference to 'an enterprise of a like character and with like aims' means an enterprise with what the immediately preceding provision calls the 'exclusive purpose' to be pursued by all ERISA fiduciaries: 'providing benefits to participants and their beneficiaries' while 'defraying reasonable expenses of administering the plan.'" 573 U.S. at 420 (quoting § 1104(a)(1)(A)(i), (ii)). So when the statute refers to an "enterprise," it is simply referring to the endeavor undertaken by all ERISA fiduciaries: discharging their "duties with respect to a plan." § 1104(a)(1)(A)(i). The point of this statutory language is thus to set the standard of care at that of a hypothetical prudent man who is in the same position as the fiduciary—carrying out a plan for the purpose of providing financial benefits to participants while defraying plan expenses.

By transforming this language from a standard of conduct into a requirement that plaintiffs plead a similar fund, the Ninth Circuit altered the statutory text. The "duty of prudence" is defined by the basic aims of "all" ERISA plans. *Dudenhoeffer*, 573 U.S. at 420-21. It is not "defined by the aims of the particular plan" overseen by the particular fiduciary in the case (whether that is an "ordinary plan" or some other kind of plan). *Id.* at 421.

And it certainly is not defined by the aims of particular investments *within* the plan, as the Ninth Circuit held.

The Ninth Circuit's alteration of the statute's text didn't stop there. In requiring ERISA plaintiffs to plead the particulars of a better-performing investment, and to show that those particulars line up with the particulars of the challenged investments, the court effectively imposed a requirement that performance allegations be pleaded with particularity.

But while other statutes require particularity, ERISA does not. ERISA does not, for instance, require a plaintiff to "specify each investment alleged to have outperformed the imprudent investment, and the reason or reasons why." *Cf.* 15 U.S.C. § 78u-4(b)(1)(b)(B) (requiring that degree of particularity for certain securities claims). Nor does it require that, "if an allegation seeks to draw an inference of imprudence based on how an investment performed in comparison to another investment, the complaint shall state with particularity all facts on which that comparison is made." *Cf. id.* If anything, ERISA's text confirms that no heightened standard applies, for that would undercut the express congressional policy of "providing … ready access to the Federal courts." 29 U.S.C. § 1001(b).

Especially in light of these textual indicators, there is no justification for requiring comparators to be pleaded with particularity, rather than "alleged generally." Fed. R. Civ. P. 9(b). "A requirement of greater specificity for particular claims is a result that must be obtained by the process of amending the Federal Rules, and not by judicial interpretation." *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 515 (2002).

2. Nor can the Ninth Circuit's meaningful-benchmark requirement be reconceptualized as "a shorthand for

describing the analysis inherent in enforcing the pleading standards of Rule 8(a) and Rule 12(b)(6)," as Intel's fiduciaries attempt to do. BIO 22. The standards required by Rule 8(a) and Rule 12(b)(6) operate in a fundamentally different way than the requirement adopted by the Ninth Circuit.

Rule 8(a) and Rule 12(b)(6) permit courts to disregard factual allegations only if they are "legal conclusions" in disguise. *Iqbal*, 556 U.S. at 678. Everything else—which is to say, every "well-pleaded, nonconclusory factual allegation" in the complaint—must be taken as true. *Id.* at 680. The court then asks "whether [those] factual allegations, if taken as true, 'state a claim to relief that is plausible on its face.'" *Berk*, 146 S. Ct. at 553.

Because this plausibility inquiry "depends on the entirety of the complaint," the factual allegations "must be considered collectively." *Tellabs*, 551 U.S. at 325. The question is "whether *all* of the facts alleged, taken collectively, give rise to a [plausible] inference of [liability], not whether any individual allegation, scrutinized in isolation, meets that standard." *Id.* at 323. A court facing a motion to dismiss an imprudence claim must therefore evaluate the "allegations as a whole" and determine whether the complaint "plausibly allege[s] a violation of the duty of prudence." *Hughes*, 595 U.S. at 177.

The meaningful-benchmark rule is incompatible with this approach. It injects a new inquiry into the analysis that focuses on whether a complaint includes a particular type of factual allegation: an allegation regarding "the performance of the investments." Pet.App. 14a. If so, the plaintiff must identify a better-performing investment with "similar risk-mitigation strategies and objectives," and similar "potential rewards." Pet.App. 13a-14a. Only if

the complaint identifies such a comparator can its performance allegations then be accepted as true and considered alongside all the other allegations to assess plausibility. Otherwise, the allegations are discarded.

That is not what this Court's precedents stand for. By demanding that individual allegations be pleaded with particularity before they may be considered in the holistic inquiry, the Ninth Circuit made two independent errors. First, it ratcheted up the pleading standard without any textual authorization for doing so. Then it compounded this error by improperly scrutinizing individual allegations in isolation to determine if the standard is met.

In defending the Ninth Circuit's analysis, the government tries to shoehorn the meaningful-benchmark rule into the first step of the ordinary pleading standard. It argues that allegations lacking "sufficient detail about the 'risk profiles' or 'mix of equity and bond investments'" of particular investments must be disregarded because they are "merely conclusory statements." U.S. Cert. Br. 17, 20. But that does not follow. The allegations that a target-date fund underperformed other target-date funds of the same vintage, and that the funds are comparable, are not a "threadbare recitals of the elements of a cause of action" just because the complaint doesn't specify every detail of each fund's risk profile or bond-to-equity ratio. *Iqbal*, 556 U.S. at 678. An allegation that lacks such granular detail is nowhere near the sort of "conclusory" legal allegation that courts may disregard under *Iqbal* and *Twombly*. If it were, those precedents would have ushered in something tantamount to a universal particularity requirement, where any non-particularized allegations could be dismissed as conclusory.

The meaningful-benchmark requirement can't be assimilated into the second step of the general pleading

standard (plausibility) either. Again, the plausibility assessment must be made by looking to *all* the factual allegations in the complaint, not just some. And again, the Ninth Circuit never made that assessment here. It never asked whether the complaint's well-pleaded performance allegations, when considered in concert with the other well-pleaded allegations in the complaint, state a plausible violation of ERISA. Instead, it determined that the complaint's failure to plead a "meaningful benchmark" meant that its performance allegations could not be considered *at all*.

3. In opposing certiorari, Intel's fiduciaries tried to sidestep this problem by suggesting that the meaningful-benchmark requirement is limited to complaints where the inference of imprudence is "simply based on the relative performance" of the investment—and nothing else. BIO 22. But that is an inaccurate description of both the Ninth Circuit's holding and the complaint in this case.

The complaint in this case makes out an inference of imprudence based on a variety of allegations. Part of those allegations concern how the funds performed. But only part of them. The rest focus on other facts bearing on imprudence, like the fact that the funds contained an unusually high allocation of risky and nontraditional assets such as hedge funds and private equity—ten times that of peer target-date funds—and the fact that Intel's fiduciaries selected the funds as the default investments anyway.

Not surprisingly, then, given the number of non-performance allegations in the complaint, the Ninth Circuit's rule is not reserved for those complaints where the inference of imprudence is based solely on allegations of performance. The Ninth Circuit said that explicitly. It held that, "to the extent a plaintiff asks a court to infer

that a fiduciary used improper methods based on the performance of the investments, *as Anderson in part does here*, he must compare that performance to funds or investments that are meaningfully similar." Pet.App. 14a-15a (emphasis added). So there is no room for doubt on this score: The Ninth Circuit described its rule as applying to any complaint relying on performance allegations even "in part"—meaning, any complaint that includes such allegations—and used that rule to disregard those allegations in this complaint without ever analyzing them in tandem with the other allegations to determine if the complaint plausibly states a claim.

B. The Ninth Circuit's "meaningful benchmark" rule is illogical, unworkable, and unnecessary.

The Ninth Circuit's methodological errors are reason enough to reject its rule. But the problems with the rule are also substantive. The rule is a poor proxy for imprudence. It is difficult to administer. And it is a judicial invention that is ultimately unnecessary to serve any legitimate purpose.

1. As this Court has explained in a related context, "any approach that designates a single fact or occurrence as always determinative of an inherently fact-specific finding … must necessarily be overinclusive or underinclusive." *Matrixx Initiatives, Inc., v. Siracusano*, 563 U.S. 27, 39 (2011). In that case, the Court rejected a judge-made pleading rule that required courts in securities cases to disregard allegations that a company failed to disclose adverse-event reports unless the complaint alleged a "statistically significant" number of them. *Id.* at 30. The trouble with this rule, which sought to kick out cases for failure to plead materiality, was that it was overinclusive. "Although in many cases reasonable investors would not consider reports of adverse events to

be material information," that will not always be so. *Id.* at 30-31. Statistical significance may bear on causation, but it is not "the only reliable indication of causation." *Id.* at 40. In other words, "the materiality of adverse event reports cannot be reduced to a bright-line rule." *Id.* at 30.

That is equally true here. The meaningful-benchmark requirement is overinclusive in that it screens out allegations that are relevant to imprudence (and indeed, allegations that are often the *most* relevant indicators of imprudence).

To see why, take an example. A complaint alleges that a fiduciary acted imprudently by defaulting participants into a target-date fund that has been, for 20 years running, the worst performing target-date fund on the market. And by a lot: Year in and year out, the fund performs twice as poorly as the next-worst fund. Is there any doubt that this complaint has stated a plausible inference of imprudence (for a failure to monitor, if nothing else)? Why should the complaint have to say anything at all about the details of other funds? The point is that fiduciaries picked the single worst fund and, for years, defaulted participants into it.

It may well be that what explains the fund's uniquely poor performance is a uniquely novel investment strategy (a penchant for a particular cryptocurrency, say). But why should that matter? Why should that mean that the court is prohibited from considering the well-pleaded factual allegations that the fund was the single worst-performing target-date fund every year for the past two decades? That is exactly what the Ninth Circuit's rule requires. And because this (hypothetical) complaint lacks any other allegations of imprudence (besides the

allegation that the fund was the default investment), it would have to be dismissed.

Now compare that complaint to another hypothetical complaint. This one claims that a fiduciary acted imprudently in retaining a particular target-date fund. The complaint alleges that there is one target-date fund out there that performed slightly better and had a similar bond-to-equity ratio and similar risk profile. Under the Ninth Circuit's rule, the performance allegations for this complaint—but not those for the other complaint—could be considered, even though they are nowhere near as indicative of imprudence. What sense does that make?

Or take a third complaint. It alleges that a bespoke target-date fund was imprudent because (1) the fiduciaries themselves compared the fund to certain benchmark funds and metrics; (2) the fund underperformed those benchmarks for years; and (3) still, the fiduciaries maintained the fund as the default investment. The complaint cannot allege, however, that the bespoke fund shares the same risk profile and bond-to-equity ratio as the benchmarks, because it does not. Does that mean that the performance allegations go out the window? Under the Ninth Circuit's rule, as this case exemplifies, they would indeed—even though the fiduciaries themselves drew the comparison and viewed it as relevant.

All of which goes to show that the Ninth Circuit's rule is illogical. It requires courts to disregard what are in many instances the most relevant type of performance allegation. And in doing so, the rule produces perverse results. It confers almost complete immunity on fiduciaries who pursue novel or reckless investment strategies, no matter how imprudent, so long as no other fiduciary follows suit. But at common law, novelty cut in

the other direction: Purchasing "securities in new and untried enterprises" was not considered to be "a proper trust investment[]." Restatement (Second) Trusts § 227, cmt. f, j. As a leading treatise explained, "[t]here [was] good reason to believe that a fiduciary could be held liable for losses resulting from the use of a product or technique sufficiently innovative that one could not point to similar use by others, despite a record of informed deliberation." Bogert § 671. That is all the more true here: When a fiduciary pursues such a novel strategy for a default investment, as Intel's fiduciaries did here, the decision is especially questionable.

Even when an investment is not a total outlier in its novelty, it can still be difficult if not impossible to identify a "meaningful benchmark." For opaque and unregulated investments, in particular, participants have little information at their disposal. Plan sponsors must "report information such as the plan's operation, funding, assets, and investments." JA896; *see* 29 C.F.R. § 2520.104b-10(a), (d)(3). But the form to report this information historically "include[d] no category for hedge funds or private equity funds," so sponsors could "record these investments in various categories," making it hard for participants to know the full extent of these investments—both for the challenged funds and for comparators. JA896. Plus, there is "no universal definition of hedge funds or private equity," and these investments' own holdings may themselves fall within various asset classes. *Id.* Put it all together, and comparators can be especially elusive for investments like those here.

At bottom, the meaningful-benchmark requirement operates in such an illogical way because it requires comparison to a fund that shares the same basic features of the challenged investment. Those features, however,

may be the very thing that makes the investment imprudent. By requiring comparison to investments that may themselves be imprudent, while ignoring all the rest, the requirement serves as a particularly poor proxy for imprudence. ERISA looks to what a *prudent* man would do in the same circumstances, not an *im*prudent one.

2. Making matters worse, the meaningful-benchmark rule is unworkable and creates more problems than it solves. It requires courts, at the pleading stage, to decide what the appropriate comparison is for a given fund. As this case illustrates, that will lead to voluminous pleading-stage records for courts to wade through in fine detail, with complaints adding as many comparators in as much detail as possible, and defendants introducing additional plan documents to shed light on the comparators.

Just how exacting a benchmark needs to be is unclear. In *Davis*, for example, comparators were rejected because they had "lower percentage[s] of international stocks" than the subject fund. 960 F.3d at 485-86. But how much lower is too low? Must they be exactly the same? How about the aims of the fund, or the strategies? How similar must they be? *See Matousek*, 51 F.4th at 281, 283. If the comparison is too close—if it is not just apples-to-apples, but "Gala apples to Gala apples," *McGeathy v. Reinalt-Thomas Corp.*, 2026 WL 617343, at *3 (D. Ariz. Mar. 5, 2026)—the comparator fund is likely to be no good. It *too* might be imprudent, or unperforming. By contrast, if the comparison is too distant—if it is apples-to-oranges—the Ninth Circuit will reject it as meaningless. Figuring out which funds (if any) fall in the sweet spot will become a difficult task, and one that

district court judges are ill-suited to perform on their own, at the beginning of a case.

There's also little reason to impose a hardline rule for only one aspect of the underperformance allegations (the similarity of the comparator) and not others (like how much the fund underperformed by, and for how long). Under the settled approach, these features of the plaintiffs' allegations would be considered together. But under the logic of the meaningful-benchmark requirement, there might also be an extended-duration requirement, or a gap-in-returns requirement. Starting down this road of erecting threshold pleading requirements for different aspects of underperformance allegations will only complicate the plausibility analysis.

3. And to what end? Adoption of the meaningful-benchmark requirement is not necessary to "weed out plainly unmeritorious suits at the pleading stage." *See Cunningham v. Cornell Univ.*, 604 U.S. 693, 711 (2025) (Alito, J., concurring) (agreeing that a judge-made pleading rule should be rejected even though it sought to achieve that "admirable goal," because "established pleading rules do not allow that workaround"); *contra* U.S. Cert. Br. 13. In this context, the "established pleading rules" do just fine on their own. They are perfectly well equipped—indeed, better equipped—to "divide the plausible sheep from the meritless goats." *Dudenhoeffer*, 573 U.S. at 425; *see also Ames v. Ohio Dep't of Youth Servs.*, 605 U.S. 303, 326 (2025) (Thomas, J., concurring) ("Atextual, judge-created legal rules have a tendency to generate complexity, confusion, and erroneous results.").

Because the Ninth Circuit failed to perform the correct analysis, its judgment should be vacated. As in *Hughes*, the proper course is to remand for a reevaluation

of "the allegations as a whole" to "consider whether petitioners have plausibly alleged a violation of the duty of prudence." 595 U.S. at 177.

CONCLUSION

The judgment of the court of appeals should be vacated and the case remanded for further proceedings.

Respectfully submitted,

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