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.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE SUPPORTING RESPONDENTS

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QUESTION PRESENTED

The Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1001 *et seq.*, requires fiduciaries of an employee-benefit plan to make, monitor, and remove plan investments "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)(B). The question presented is as follows:

Whether pleading an imprudent-investment claim under ERISA, predicated on the alleged underperformance of a fund included within an employee-benefit plan, requires allegations that the fund underperformed relative to an identified benchmark that is a sound comparator for that fund.

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INTEREST OF THE UNITED STATES

The question presented in this case concerns the pleading standard for claims of breach of fiduciary duty under the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1001 *et seq.* The Secretary of Labor has primary authority for administering ERISA. See 29 U.S.C. 1002(13), 1132-1138. At the Court's invitation, the United States filed a brief as amicus curiae at the petition stage in *Parker-Hannifin Corp.* v. *Johnson*, No. 24-1030 (Dec. 9, 2025), which raises the same question that is presented in this case.

INTRODUCTION

The ability to draw inferences based on comparisons necessarily depends on whether the comparators share

relevant features. For example, comparing the recovery time of two patients reveals little about which doctor selected the more prudent treatment if one doctor was attempting to optimize speed of recovery while the other was aiming to minimize side effects. In this case the parties dispute whether that commonsense principle applies to allegations regarding the relative performance of different investment funds. The court of appeals correctly held that it does.

Under ERISA, fiduciaries of qualifying employee-benefit plans must 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 a like character and with like aims." 29 U.S.C. 1104(a)(1)(B). That standard focuses on whether a fiduciary employed appropriate processes in making investment decisions, not on the later results of those decisions.

Because plan participants often lack visibility into a fiduciary's decisionmaking processes, they may attempt to infer a breakdown in process by alleging that particular funds included in an ERISA plan underperformed relative to other investment options. Standing alone, however, the fact that performance varies among different investments is unremarkable, and it does not suggest that any one of those options is an unreasonable or imprudent choice. Indeed, each ERISA fiduciary has an "obligation to assemble a diverse menu of options" from which plan participants may choose, in recognition of the fact that different plan participants will have varying objectives and risk tolerances. *Hughes* v. *Northwestern Univ.*, 595 U.S. 170, 176 (2022). It therefore is to be expected that performance will vary even among

the funds that a particular ERISA fiduciary chooses to make available in a single ERISA plan. For substantially the same reasons, a particular fund's underperformance relative to other investments that are *not* made available in the same plan does not by itself raise a plausible inference of imprudent fiduciary conduct.

Rather, to support a plausible inference that a fund's relative underperformance reflected a fiduciary's breach of the duty of prudence, a plaintiff must measure the fund's performance against a meaningful benchmark—a fund that shares sufficient characteristics to provide a basis for comparison. Use of such a benchmark is necessary to rule out the "obvious alternative explanation" that the difference in results is due to differences in objectives or risk profiles between the funds that do not suggest imprudence. *Bell Atl. Corp.* v. *Twombly*, 550 U.S. 544, 567 (2007). Because petitioners did not meet that burden, the court of appeals' judgment upholding the dismissal of their complaint should be affirmed.

STATEMENT

A. Legal Background

ERISA "protect[s] * * * the interests of participants in employee benefit plans" by "establishing standards of conduct, responsibility, and obligation for fiduciaries of employee benefit plans, and by providing for appropriate remedies, sanctions, and ready access to the Federal courts." 29 U.S.C. 1001(b). Every ERISA plan must have at least one named fiduciary with authority to control and manage the operation and administration of the plan. 29 U.S.C. 1102(a)(1).

Under ERISA, plan fiduciaries owe certain duties derived from the common law of trusts. See 29 U.S.C. 1104(a); *Central States, Se. & Sw. Areas Pension Fund* v. *Central Transp., Inc.*, 472 U.S. 559, 570 (1985). Plan

fiduciaries must act "solely in the interest of the participants and beneficiaries" and "for the exclusive purpose" of "providing benefits" and "defraying reasonable [plan] expenses." 29 U.S.C. 1104(a)(1)(A). Most relevant here, ERISA 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 a like character and with like aims." 29 U.S.C. 1104(a)(1)(B). That "duty of prudence" includes both a duty to "exercise prudence in selecting investments at the outset," and a "continuing duty to monitor investments and remove imprudent ones." *Tibble* v. *Edison Int'l*, 575 U.S. 523, 529-530 (2015).

ERISA authorizes plan participants, beneficiaries, and fiduciaries, as well as the Secretary of Labor, to sue for appropriate relief to remedy a breach of fiduciary duty. 29 U.S.C. 1132(a)(2). In determining whether a fiduciary's investment was prudent, courts focus on the "fiduciary's conduct in arriving at an investment decision, not on its results, and ask[] whether a fiduciary employed the appropriate methods to investigate and determine the merits of a particular investment." *In re Unisys Savings Plan Litig.*, 74 F.3d 420, 434 (3d Cir.), cert. denied, 519 U.S. 810 (1996).

Litigation seeking to enforce an ERISA fiduciary's duty of prudence implicates "competing congressional purposes," including "Congress' desire to offer employees enhanced protection for their benefits, on the one hand, and, on the other, its desire not to create a system that is so complex that administrative costs, or litigation expenses, unduly discourage employers from offering welfare benefit plans in the first place." *Varity Corp.* v. *Howe*, 516 U.S. 489, 497 (1996); see *Conkright* v. *From-*

mert, 559 U.S. 506, 517 (2010) ("ERISA represents a 'careful balancing' between ensuring fair and prompt enforcement of rights under a plan and the encouragement of the creation of such plans.") (citation omitted). Accordingly, a court resolving a motion to dismiss must engage in "careful, context-sensitive scrutiny of a complaint's allegations" of imprudence in light of the usual standards for stating a claim. *Fifth Third Bancorp* v. *Dudenhoeffer*, 573 U.S. 409, 425 (2014).

B. The Present Controversy

1. Respondent Intel Corporation is a technology company that sponsors two employee-benefit plans: the 401(k) Savings Plan and the Retirement Contribution Plan (the Plans), both of which are defined-contribution plans under ERISA. Pet. App. 35a; J.A. 29-30. In a defined-contribution plan, participants maintain individual investment accounts, the value of which "is determined by the market performance of employee and employer contributions, less expenses." *Tibble*, 575 U.S. at 525; see 29 U.S.C. 1002(34). Fiduciaries of defined-contribution plans are responsible for assembling a menu of investment options, and plan participants then choose their investments from that menu. See Employee Benefits Sec. Admin., U.S. Dep't of Labor, *What You Should Know About Your Retirement Plan* 3, 25 (Sept. 2021), https://perma.cc/4GYP-DNCX.

The Plans offer participation in customized funds managed by the Plans' trustees. Among the available options are two types of funds relevant here: target-date funds and global diversified funds. Target-date funds "hold a mix of asset classes including stocks, bonds, and cash equivalents that are adjusted to become more conservative as the fund approaches" the participant's anticipated retirement date. Pet. App. 6a. Global

diversified funds "invest in a variety of assets, including domestic and international equity funds, bonds, and short-term investments," using a "fixed allocation model" that does not adjust the mix of assets over time. *Id.* at 6a, 37a.

After the 2008 market crash, Intel began to include investments in hedge funds and private equity vehicles in the holdings of its target-date and global diversified funds. Pet. App. 6a. The Plans' fiduciaries informed participants that such investments were part of a "risk-mitigation objective." *Id.* at 13a. The fiduciaries explained that, because the assets' "returns are less correlated to equity markets," the fiduciaries expected the assets to "provide greater downside protection in faltering markets, with the tradeoff being slight underperformance in rallying ones." *Ibid.* The fiduciaries also observed that, because the hedge funds and private equity vehicles were "actively run strategies," the fees for managing the funds were higher than the fees for "passively run index funds" that required less maintenance. J.A. 577, 651.

2. a. Petitioners are former Intel employees who participated in the Plans. Pet. App. 34a. They filed a putative class-action complaint against the Plans' fiduciaries (respondents here), alleging breaches of ERISA's fiduciary duties. As relevant here, the complaint alleged that respondents had breached their duty of prudence by selecting and maintaining a significant portion of the target-date and global diversified funds' investments in hedge funds and private equity funds. *Id.* at 9a. According to petitioners, Intel's funds had "performed significantly worse than comparable funds and accrued higher-than-average fees." 2021 WL 229235, at *3. Petitioners alleged that the fiduciaries' "failure to

investigate and consider better-performing investment options * * * constitutes a breach of the duty of prudence." *Id.* at *7.

The district court dismissed the complaint with leave to amend. 2021 WL 229235 at *1-*15. The court explained that petitioners had attempted to show imprudence by comparing the Intel funds' performance to other funds, but had "failed to provide sufficient allegations to support their claim that these other funds are adequate benchmarks against which to compare the Intel Funds." *Id.* at *8. The court held that, in the absence of allegations showing that the funds are comparable in relevant respects, alleging that one fund underperformed another is "insufficient to state a claim for breach of the duty of prudence." *Ibid.* The court permitted petitioners to file an amended complaint to address that deficiency, *id.* at *14, and petitioners did so, Pet. App. 45a.

b. The district court dismissed petitioners' amended complaint with prejudice. Pet. App. 33a-83a. The court held that petitioners had again failed to allege that their comparator funds pursued the same objectives as Intel's funds. *Id.* at 56a, 61a-62a. Although petitioners asserted that they had compared Intel's target-date funds to the benchmarks Intel itself had designated, the court concluded that this comparison likewise failed because petitioners had misidentified Intel's designated benchmark. *Id.* at 59a.

The district court also rejected petitioners' assertion that respondents' "investment strategy itself is imprudent." Pet. App. 65a. The court viewed that claim as amounting to an argument that respondents "never should have pursued a risk mitigation strategy" and instead should have employed a strategy "that could pro-

vide more returns for employees." *Id.* at 66a. That argument did not state a claim, the court held, because "ERISA fiduciaries are not required to adopt a riskier strategy simply because that strategy may increase returns." *Ibid.*

3. The court of appeals affirmed. Pet. App. 1a-31a. The court explained that, when an ERISA plaintiff alleges imprudence based on the relative underperformance of specific investments selected by the plan fiduciary, an inference of imprudence will be plausible only if the complaint identifies "a sound basis for comparison—a meaningful benchmark." *Id.* at 12a (quoting *Matousek* v. *MidAmerican Energy Co.*, 51 F.4th 274, 278 (8th Cir. 2022)). The court viewed that requirement as an application of general pleading principles, *id.* at 10a-11a, and as "implicit in ERISA's text," which pegs the standard of care to a "hypothetical prudent person 'acting *in a like capacity* . . . in the conduct of an enterprise *of a like character* and *with like aims*,'" *id.* at 12a (quoting and adding emphasis to 29 U.S.C. 1104(a)(1)(B)). The court held that petitioners had not satisfied that requirement because they had "sought to compare Intel's funds to equity-heavy retail funds that pursued different objectives—typically revenue generation"—than the risk-mitigation objective of Intel's funds. *Id.* at 14a.

The court of appeals likewise rejected petitioners' assertions that Intel's approach was so unusual that it was impossible to find a meaningful comparator and that the strategy itself was imprudent. Pet. App. 15a-16a. The court explained that petitioners had "access to detailed information" about the funds, so that petitioners were "well positioned to find appropriate comparators or to explain why these specific investments are so inherently risky, individually or in the aggregate, that

selecting them was imprudent." *Id.* at 20a. The court concluded that, because petitioners had not made either showing, they had not stated a claim for breach of the duty of prudence. *Ibid.*

Judge Berzon joined the majority opinion in full, while writing separately to emphasize that comparative allegations are not always essential in order to adequately plead an ERISA imprudence claim. Pet. App. 24a. She expressed the view that a complaint may be adequate if it includes direct allegations regarding the fiduciary's decisionmaking process, *id.* at 25a; indirect allegations based on the "inherent risk" of certain investments, *id.* at 27a; or comparisons between individual investments or plans, *id.* at 27a-28a. Judge Berzon described the relevant question in each case as "whether the facts alleged—comparative or not—lead to the plausible inference that the actual process used by the defendant fiduciary was flawed." *Id.* at 31a. With that understanding, Judge Berzon agreed that petitioners had "failed to plead facts that support [their] claim either directly or inferentially." *Ibid.*

SUMMARY OF ARGUMENT

A. ERISA's duty of prudence requires fiduciaries to engage in an appropriate process to determine whether a particular investment decision would be appropriate. Whether a fiduciary complied with that duty in a specific instance does not depend on ultimate investment results. Rather, it turns on whether, in light of the particular character and financial objectives of the plan, the fiduciary utilized an appropriate process, reflecting how an objectively reasonable advisor would act, in reaching an investment decision at the time that decision was made. That focus on the investment-selection process rather than on ultimate outcomes is clear from the stat-

utory text, which refers to "the circumstances * * * prevailing" at the time of the investment decision and to a prudent fiduciary's conduct of "an enterprise of a like character and with like aims." 29 U.S.C. 1104(a)(1)(B). It also follows from the common law of trusts and from longstanding Department of Labor regulations, which likewise focus on process and context.

Given the process-driven, context-sensitive inquiry involved in assessing a fiduciary's compliance with the duty of prudence, there will often be a "range of reasonable judgments a fiduciary may make." *Hughes* v. *Northwestern Univ.*, 595 U.S. 170, 177 (2022). Two (or more) such judgments may each be prudent even though they ultimately produce different financial results. Accordingly, unless two funds are meaningfully similar, an allegation that one fund underperformed relative to another does not by itself support an inference that the fiduciary breached his duty to plan participants. Without meaningful similarity, such an allegation does not rule out the possibility that the underperformance was due to differences in the funds' investment strategies, objectives, or risk tolerances. When a complaint does not exclude that "obvious alternative explanation," *Bell Atl. Corp.* v. *Twombly*, 550 U.S. 544, 567 (2007), the court may not reasonably draw an inference that the fiduciary breached the duty of prudence.

B. Petitioners contend that requiring allegations that the comparator funds are meaningfully similar would establish a categorical pleading rule of the type this Court has rejected, impose a heightened pleading standard, and erect an insuperable barrier. But in this context, the meaningful-comparator requirement is an application of ordinary pleading rules. And plan participants are well equipped to identify a meaningful com-

parator when necessary. ERISA's extensive disclosure requirements give participants significant information about plan investments and strategy, and meaningful comparators may be alleged based on publicly available information, as well as information from investment professionals who regularly create benchmarks for new assets.

C. The court of appeals correctly held that petitioners' complaint did not state a claim for breach of the duty of prudence. Although petitioners alleged that Intel's funds had underperformed relative to various other funds, petitioners did not allege that the Intel funds and comparator funds shared the same risk-mitigating objectives. In asserting that Intel's funds underperformed the benchmarks that Intel itself had designated, petitioners misidentify the relevant benchmarks. And because ERISA focuses on a plan's investment portfolio as a whole, the courts below correctly rejected petitioners' alternative argument that hedge funds and private equity funds as an asset class are too risky to be a part of a prudent fiduciary's investments.

ARGUMENT

PLEADING A BREACH OF THE DUTY OF PRUDENCE BASED ON THE RELATIVE UNDERPERFORMANCE OF FUNDS SELECTED BY AN ERISA FIDUCIARY REQUIRES A MEANINGFUL BENCHMARK

A. To Plausibly Infer A Breach Of Fiduciary Duty From The Relative Underperformance Of A Fund Included In An ERISA Plan, A Meaningful Benchmark Is Necessary

ERISA's duty of prudence is a process-based obligation that allows fiduciaries to make a range of reasonable judgments that may lead to a range of different re-

sults. To plausibly allege that one fund's underperformance relative to another implies a breach of fiduciary duty, a plaintiff must compare funds that are meaningfully similar.

1. ERISA's duty of prudence contemplates a context-sensitive inquiry focused on process, not results

ERISA's text, the common-law trust principles from which that text was drawn, and longstanding regulations interpreting that text all show that the duty of prudence is concerned with the fiduciary's process of selecting an investment, taking into account the particular characteristics and financial objectives of the plan. When a fiduciary conducts an appropriate process, a variety of investment choices may each be prudent, even though the different choices produce different outcomes.

a. ERISA's duty of prudence requires a fiduciary 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 a like character and with like aims." 29 U.S.C. 1104(a)(1)(B). By focusing on "the circumstances then prevailing," *ibid.*, ERISA eschews hindsight bias and requires a "context-specific" inquiry into the fiduciary's conduct and process in coming to an investment decision, *Hughes* v. *Northwestern Univ.*, 595 U.S. 170, 173 (2022). Whether that conduct and process were prudent does not depend on the results that ensue after an investment decision is made. And by requiring the fiduciary to act as a "prudent man" conducting "an enterprise of a like character and with like aims," 29 U.S.C. 1104(a)(1)(B), ERISA contemplates an investment analysis that is attuned to

the particular characteristics and financial objectives of the plan the fiduciary is managing.

b. The statutory focus on process and context is consistent with the common law of trusts, from which ERISA's duty of prudence was derived. See *Central States, Se. & Sw. Areas Pension Fund* v. *Central Transp., Inc.*, 472 U.S. 559, 570 (1985). Like ERISA, trust law uses a "prudent person" standard to determine the level of care, skill, and judgment required of a trustee. See, *e.g.*, Restatement (Third) of Trusts § 77, at 81-82 (2007) (Third Restatement); Restatement (Second) of Trusts § 174, at 379 (1959) (Second Restatement). Under that standard, "the trustee is required to manifest the care, skill, prudence, and diligence of an ordinarily prudent man engaged in similar business affairs and with objectives similar to those of the trust in question." George Gleason Bogert & George Taylor Bogert, *The Law of Trusts and Trustees* § 541, at 167 (rev. 2d ed. 1993); see 3 Austin Wakeman Scott et al., *Scott and Ascher on Trusts* § 17.6, at 1205 (5th ed. 2007).

In making investment decisions, a trustee must "invest and manage the funds of the trust as a prudent investor would, in light of the purposes, terms, distribution requirements, and other circumstances of the trust." Third Restatement § 90, at 292; see Second Restatement § 227, at 529. As a prudent investor, a trustee must balance the competing interests of maximizing returns and minimizing risks. Second Restatement §§ 176, 181, at 381, 391. Properly managing risk "requires that careful attention be given to the particular trust's risk tolerance, that is, to its tolerance for volatility." Third Restatement § 90 cmt. e(1), at 302; see *id.* at 302-307. Given the potential for differences in the characteristics and objectives of particular trusts, "no objective, general le-

gal standard can be set for a degree of risk that is or is not prudent." *Id.* at 304. Instead, "[d]ecisions concerning a prudent or suitable level of market risk for a particular trust can be reached only after thoughtful consideration of its purposes and all of the relevant trust and beneficiary circumstances." *Ibid.*

At common law, a court reviewing a trustee's investment decisions "endeavor[ed] to place itself in the position of the trustee at the time he made the investment and not to charge him with knowledge of what has happened since the investment." Amy Morris Hess et al., *The Law of Trusts and Trustees* § 612, at 60 (3d ed. 2000); see 3 Austin Wakeman Scott, *The Law of Trusts* § 227, at 1807 (3d ed. 1967) (Scott). The court would consider whether the trustee had complied with his obligations "to investigate and evaluate investments, and to invest prudently." *Fink* v. *National Sav. & Trust Co.*, 772 F.2d 951, 962 (D.C. Cir. 1985) (Scalia, J., concurring in part and dissenting in part). In the typical case, "the extent of the trustee's investigation and evaluation [was] * * * the focus of inquiry." *Ibid.*; see Second Restatement § 227 cmt. b, at 530; 3 Scott § 227.1, at 1809.

Accordingly, courts have long rejected claims that a trust asset's decrease in value necessarily indicates a failure on the part of the trustee. See Resp. Br. 20. Indeed, in the seminal case defining trustee liability for investment management, the Supreme Judicial Court of Massachusetts observed that even "after the most careful investigation," investments may "ultimately fail." *Harvard Coll.* v. *Amory*, 26 Mass. (9 Pick.) 446, 461 (1830). If trustees were nonetheless liable for such results, no one "would undertake such hazardous responsibility." *Id.* at 459. The court thus explained that "[a]ll

that can be required of a trustee" is that "he shall conduct himself faithfully and exercise a sound discretion." *Id.* at 461.

c. Since the Department of Labor first issued regulations addressing a fiduciary's duty of prudence under ERISA, those regulations have likewise focused on fiduciaries' decisionmaking processes, and on the ways in which specific investment decisions were intended to further the objectives of particular plans. 29 C.F.R. 2550.404a-1 (1979). Beginning in 1979, the Department's regulations have provided that, to comply with the duty of prudence, fiduciaries should "give[ ] appropriate consideration to those facts and circumstances that, given the scope of such fiduciary's investment duties, the fiduciary knows or should know are relevant to the particular investment or investment course of action involved, including the role" the investment plays in the plan's portfolio. 29 C.F.R. 2550.404a-1(b)(1)(i) (1979). The regulations further specify that "appropriate consideration" includes a determination that the investment "is reasonably designed, as part of the portfolio * * * to further the purposes of the plan." 29 C.F.R. 2550.404a-1(b)(2)(i) (1979). In their current form, the regulations retain those provisions while also specifying that the fiduciary should compare available options by considering "the risk of loss and the opportunity for gain (or other return) associated with the investment * * * compared to the opportunity for gain (or other return) associated with reasonably available alternatives with similar risks." 29 C.F.R. 2550.404a-1(b)(2)(i).

d. Consistent with the process- and context-oriented inquiry that is mandated by the statutory text, the common law, and DOL regulations, this Court has recognized that "the circumstances facing an ERISA fiduci-

ary will implicate difficult tradeoffs, and courts must give due regard to the range of reasonable judgments a fiduciary may make based on her experience and expertise." *Hughes*, 595 U.S. at 177. For some of the funds made available, a fiduciary may reasonably opt for a risk-mitigation strategy that he predicts will lead to lower returns, but that will reliably preserve existing capital. For others, the fiduciary may opt for greater risk in exchange for greater potential upside. The range of reasonable judgments a fiduciary may make in carrying out his "obligation to assemble a diverse menu of options," *id.* at 176, will inevitably lead to a range of different results, yet all may be consistent with the fiduciary's duty of prudence.

2. Under ordinary pleading rules, a plaintiff must identify a meaningful benchmark in order to create a plausible inference that the relative underperformance of a particular investment reflected a breach of fiduciary duty

Because differences in the performances of two investments may be attributable to differences in objectives rather than to deficient decisionmaking, pleading such differences is insufficient to state a claim that the fiduciary breached his duty of prudence. Rather, such differences will logically suggest imprudence only if the two investments share enough characteristics to negate obvious alternative explanations for the gap in performance.

a. Under established pleading principles, a suit will survive a motion to dismiss and will proceed to discovery only if the complaint "state[s] a claim to relief that is plausible on its face." *Bell Atl. Corp.* v. *Twombly*, 550 U.S. 544, 570 (2007). For a claim to be plausible, there must be "more than a sheer possibility that a defendant

has acted unlawfully." *Ashcroft* v. *Iqbal*, 556 U.S. 662, 678 (2009). To cross the "line between possibility and plausibility of entitlement to relief," a complaint must do more than "plead[ ] facts that are merely consistent with a defendant's liability." *Ibid.* (citation and internal quotation marks omitted). The pleaded facts must instead "allow[ ] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged," *ibid.*, and rule out "obvious alternative explanation[s]" for the defendant's conduct, *Twombly*, 550 U.S. at 567.

b. In the context of a duty-of-prudence claim under ERISA, applying those principles to allegations of relative underperformance reveals the need for a meaningful benchmark. Because the duty of prudence is concerned with process rather than results, "disappointing performance by itself does not conclusively point towards deficient decision-making." *Smith* v. *CommonSpirit Health*, 37 F.4th 1160, 1167 (6th Cir. 2022). Allegations involving a fund's performance are relevant only insofar as they indicate that the plan's fiduciaries did not properly evaluate particular investments when selecting or maintaining them. A bare allegation that one investment performed worse than another does not give rise to that inference unless the "alternative investment option[ ]" forgone by the fiduciary would have achieved superior results while pursuing "similar investment strategies, similar investment objectives, or similar risk profiles" as the investment the fiduciary actually selected. *Matney* v. *Barrick Gold of N. Am.*, 80 F.4th 1136, 1148 (10th Cir. 2023). Otherwise, the difference in performance may be attributable to differences in strategy, objectives, or risks—none of which necessarily suggests imprudence.

Consider a startup company with a workforce comprising individuals ranging in age from 20 to 65. A fiduciary may determine that the risk tolerance for the younger employees is higher than average because most of those workers will not retire for decades. For those employees, the fiduciary's investment menu may include funds that promise higher returns with higher risks that may be offset in the long run. Comparing the performance of those funds to the funds the fiduciary chooses for employees nearing retirement age, which may minimize volatility while promising lower returns, would not indicate whether the fiduciary had acted imprudently in selecting either investment. In such circumstances, the "obvious alternative explanation" for the different performance of the different funds is that the funds had different objectives and reflected different strategies. *Twombly*, 550 U.S. at 567.

The commonsense understanding that meaningful similarities must exist before comparisons can give rise to plausible inferences is not unique to the circumstances here. Comparing the mortality rate of two hospitals does not reveal which hospital performs better if one is a trauma center and the other performs only elective surgeries. Comparing the mile times of two track athletes does not reveal who is the better runner if one is a miler and the other a sprinter. And "[c]omparing apples and oranges is not a way to show that one is better or worse than the other." *Davis* v. *Washington Univ. in St. Louis*, 960 F.3d 478, 485 (8th Cir. 2020).

Consistent with that principle, the Court in other contexts has recognized the need for meaningful similarities when drawing inferences based on comparisons. For example, when a plaintiff attempts to allege unlawful discrimination by alleging that he was treated differ-

ently than another person, the plaintiff must allege facts establishing that he is similarly situated to the other person. See, *e.g.*, *United States* v. *Armstrong*, 517 U.S. 456, 466 (1996); *Village of Willowbrook* v. *Olech*, 528 U.S. 562, 564 (2000) (per curiam). Without that similarity, differential treatment does not give rise to an inference of unlawful discrimination. See, *e.g.*, *Freeman* v. *Town of Hudson*, 714 F.3d 29, 39 (1st Cir. 2013) (dismissing equal-protection claim where the complaint did not establish that the plaintiffs and the alleged comparators were similarly situated in relevant respects); *Ruston* v. *Town Bd. for the Town of Skaneateles*, 610 F.3d 55, 59-60 (2d Cir.) (same), cert. denied, 562 U.S. 1108 (2010); *Griffin Indus., Inc.*, v. *Irvin*, 496 F.3d 1189, 1205-1207 (11th Cir. 2007) (same), cert. denied, 553 U.S. 1004 (2008). The same logic applies here.

B. Petitioner's Contrary Arguments Lack Merit

In contesting the need for a meaningful benchmark, petitioners assert that such a requirement is inconsistent with this Court's ERISA precedents, out of step with ordinary pleading standards, and unduly restrictive of underperformance claims. Those arguments fail.

1. Requiring a meaningful benchmark is consistent with this Court's precedents interpreting ERISA

Petitioners contend (Br. 30-36, 40-41) that requiring a meaningful benchmark for claims based on relative underperformance would be inconsistent with this Court's ERISA precedents, which have rejected categorical pleading rules and have read Section 1104(a)(1)(B) to preclude consideration of certain plan objectives. Those arguments lack merit. The requirement that a plaintiff identify a meaningful benchmark is not a categorical pleading rule, and considering a plan's financial objec-

tives is consistent with this Court's decisions interpreting Section 1104(a)(1)(B).

a. Petitioners assert (Br. 30-36) that the court of appeals' decision imposes a categorical pleading rule of the type this Court rejected in *Fifth Third Bancorp* v. *Dudenhoeffer*, 573 U.S. 409 (2014), and *Hughes* v. *Northwestern University*, 595 U.S. 170 (2022). That is incorrect.

In *Dudenhoeffer*, the Court rejected a "special presumption" favoring certain ERISA fiduciaries and held that courts should instead "apply the pleading standard as discussed in *Twombly* and *Iqbal*." 573 U.S. at 418, 426. In *Hughes*, the Court rejected a court of appeals' decision that had "elided" certain "aspect[s] of the duty of prudence" and had led the lower court to disregard relevant allegations. 595 U.S. at 176. In this case, by contrast, the court of appeals below did not impose any presumption of prudence or depart from the correct understanding of ERISA's fiduciary duties. Rather, in holding that a plaintiff alleging a particular theory of fiduciary breach must identify an appropriate benchmark, the court adhered to the bedrock principle that a complaint does not state a claim for relief "where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct." *Iqbal*, 556 U.S. at 679. Neither *Dudenhoeffer* nor *Hughes* casts doubt on the court of appeals' analysis here.

Indeed, the Court in *Dudenhoeffer* specifically recognized that certain factual allegations may be required in order for an ERISA complaint to state a claim under certain theories. The Court explained that, when a stock is publicly traded and a plaintiff alleges that "a fiduciary should have recognized from publicly available information alone that the market was overvaluing or undervaluing the stock," such allegations will be "im-

plausible as a general rule," such that the plaintiff will need to allege "special circumstances" that would "affect[ ] the reliability of the market price." *Dudenhoeffer*, 573 U.S. at 426-427. The *Dudenhoeffer* Court likewise recognized that, when a plaintiff alleges imprudence based on inside information that the fiduciary should have known, he must identify "an alternative action that the defendant could have taken that would have been consistent with the securities laws and that a prudent fiduciary in the same circumstances would not have viewed as more likely to harm the fund than to help it." *Id.* at 428. Like the principles that the Court outlined in *Dudenhoeffer*, the principle that the court of appeals recognized in this case—*i.e.*, that one investment's underperformance relative to another gives rise to an inference of a breach of fiduciary duty only if the two investments are similar in relevant respects—is simply an application of established pleading standards to a particular factual context. See pp. 16-19, *supra*.

Consistent with that understanding, the court of appeals correctly recognized that "a plaintiff does not necessarily need to identify comparable funds or investments" in order to state a claim that the defendant fiduciary breached his duty of prudence. Pet. App. 14a. A plaintiff could instead "make direct allegations" regarding inadequacies in the fiduciaries' process of evaluating, selecting, or maintaining the relevant investments. *Ibid.* A plaintiff could also allege that a fiduciary acted imprudently by "allocat[ing] a significant portion of the plan's assets to" a self-evidently risky investment, such as "a new type of security backed entirely by lottery tickets." *Id.* at 27a (Berzon J., concurring). In such circumstances, "[t]he inherent risk of that category of investment might be sufficient" to create a plausible in-

ference of imprudence, *ibid.*; see *id.* at 17a (majority opinion), even if the security temporarily outperforms other investments because some of the lottery tickets turn out to be winners. It is only where a plaintiff seeks to establish an inference of breach based on relative underperformance that a meaningful comparator is required.

b. Petitioners fare no better in contending (Br. 40-41) that the court of appeals departed from *Dudenhoeffer*'s interpretation of ERISA's text. The court below correctly explained that, by referencing a hypothetical prudent person "acting in a *like capacity* * * * in the conduct of an enterprise of a *like character* and with *like aims*," Section 1104(a)(1)(B) indicates that a comparative analysis should account for a particular plan's objectives and characteristics. 29 U.S.C. 1104(a)(1)(B) (emphases added).

The Court in *Dudenhoeffer* declined to read that language as allowing the duty of prudence to "var[y] depending upon the specific *nonpecuniary* goal set out in an ERISA plan"—there, a goal to promote employee ownership of employer stock. 573 U.S. at 420 (emphasis added). Instead, the Court held that the statutory reference to the enterprise's character and aims refers to the purpose "to be pursued by all ERISA fiduciaries: 'providing benefits to participants and their beneficiaries' while 'defraying reasonable expenses of administering the plan.'" *Ibid.* (quoting 29 U.S.C. 1104(a)(1)(A)(i) and (ii)). Taking account of the fact that different plans may employ different strategies and pursue different objectives to achieve the ultimate purpose of providing benefits is consistent with that holding. The *Dudenhoeffer* Court did not suggest that the fiduciary's chosen methods of achieving the plan's *pecuniary* purposes are

irrelevant to the analysis of a duty-of-prudence claim. To the contrary, the Court emphasized that "the appropriate inquiry will necessarily be context specific." *Id.* at 425. The strategies and objectives that a plan employs and pursues are part of that context—particularly when a court considers an ERISA claim that is predicated on a particular investment's alleged relative underperformance.

2. Requiring a meaningful benchmark in this context does not impose a heightened pleading standard

Contrary to petitioners' contentions (Br. 41-45), requiring the plaintiff to identify a meaningful benchmark in the circumstances presented here, where an ERISA complaint alleges that the relative underperformance of a particular investment supports an inference that a fiduciary breached his duty of prudence, is consistent with the pleading standards in the Federal Rules of Civil Procedure and with this Court's precedents interpreting those standards.

Petitioners assert (Br. 41) that requiring a meaningful comparator effectively imposes a heightened pleading standard that Congress has not authorized. But requiring a plaintiff to allege that the better performing fund is meaningfully similar to the fund at issue demands only the degree of factual information that would create a plausible inference of imprudent fiduciary conduct by excluding other obvious explanations. That type of information is necessary for any claim based on inferences drawn from comparisons. See pp. 18-19, *supra*.

Petitioners suggest (Br. 43) that allegations generally asserting the comparability of two funds should suffice, and that *Twombly* and *Iqbal* do not require additional details regarding the funds' risk profiles, objectives, or strategies. But a general allegation that two

funds are "comparable" is too conclusory to credit. It is the type of "'naked assertion[ ]' devoid of 'further factual enhancement'" that the Court has found insufficient. *Iqbal*, 556 U.S. at 678 (citation omitted). And because an allegation of comparability standing alone is "nothing more than [a] conclusion[ ]," it is "not entitled to the assumption of truth." *Id.* at 679.

Without facts supporting comparability, courts may accept as true the allegation that the employer's fund underperformed another fund. But that fact, taken as true, does not give rise to an inference that the fiduciary breached the duty of prudence. Without common features between the funds, the central step of the underperformance theory—*i.e.*, the inference that underperformance suggests a failure to prudently select or monitor funds—is left unsupported. In those circumstances, the allegation that underperformance resulted from a breach of fiduciary duty is no more plausible than the alternative explanation that the underperformance reflects different objectives.

Petitioners are likewise wrong in contending (Br. 44-45) that the court of appeals departed from applicable pleading standards by requiring a meaningful comparator for claims that rely only "in part" on allegations of underperformance. Because a fund's underperformance untethered to a meaningful comparator is consistent with prudent conduct, the fund's performance also will not bolster other factual allegations in a way that renders them sufficiently plausible to state a claim. If those other factual allegations themselves give rise to a plausible inference of a breach of fiduciary duties, the fund's performance is irrelevant. But if the other factual allegations do not create such an inference, the fund's underperformance relative to a dissimilar fund cannot

reinforce the insufficient allegation in a way that would make the whole greater than the sum of its parts.

3. A meaningful benchmark is an achievable pleading requirement

Petitioners' remaining arguments amount to assertions that requiring a meaningful benchmark for claims of underperformance will impose unnecessary and insurmountable pleading barriers. Pet. Br. 45-51. Those arguments are unconvincing.

Petitioners contend (Br. 46) that requiring a meaningful comparator will "screen[ ] out allegations that are relevant to imprudence," including a hypothetical complaint alleging that a fiduciary acted imprudently by defaulting participants into a target-date fund that has been the worst performing fund on the market, by a significant margin, for 20 years. But if such a hypothetical scenario occurred, a plan participant would have no difficulty pleading a claim. If the fund underperforms every existing target-date fund, the plan participants will almost certainly be able to identify a target-date fund whose character and aims are sufficiently similar to those of the fiduciary's chosen investment that the fund can serve as an appropriate comparator. Doing so would render plausible an allegation that a prudent fiduciary pursuing the same objectives would not have selected or retained the underperforming fund.

If a plaintiff wishes to challenge a "uniquely novel investment strategy" that sets the fund apart from every existing fund, Pet. Br. 46, there will likely be other funds that use different strategies to pursue the same general objectives. Standard investment-evaluation concepts like risk profile and expected returns are transferrable between assets. Thus, where two funds seek to achieve similar levels of risk using different asset-

allocation strategies, the challenged fund may be compared to a fund with more conventional assets that bear the same level of risk. Isolating the asset-allocation strategy while holding risk level and other variables constant makes the comparison meaningful and may bolster an assertion that adopting the novel strategy was imprudent. And if the fund's novel strategy is investing a significant portion of its assets in a "particular cryptocurrency," *ibid.*, the plaintiff may be able to allege a breach of fiduciary duty by asserting that the specific cryptocurrency is a particularly risky asset, thereby rendering an allegation of imprudence plausible regardless of the fund's relative performance. See pp. 21-22, *supra*.

Petitioners also assert (Br. 47) that the meaningful-benchmark requirement "confers almost complete immunity on fiduciaries who pursue novel or reckless investment strategies." See *id.* at 47-48. But even where a particular investment strategy is novel, financial-service providers have developed meaningful benchmarks to guide clients on the performance of new assets and funds that lack public performance data. For example, when considering assets like private credit and private-equity shares that lack the reported daily market pricing of traditional publicly traded stocks, investment professionals use alternative data sources and methodologies that chart internal rates of return and other measures of performance. See, *e.g.*, PitchBook Data, Inc., *PitchBook Fund Benchmarks Data and Methodology* 9-10 (Sept. 29, 2025), https://perma.cc/XD3P-JZQD (describing benchmarking criteria for private market funds).

As a result of ERISA's "extensive disclosure requirements," *Smith*, 37 F.4th at 1168, plaintiffs seeking to allege a meaningful benchmark will have access to

detailed information regarding the makeup of their own plans. See 29 U.S.C. 1023(b), 1108(b), 1365; see also 29 C.F.R. 2550.404a-5(d)(1) and (4). Pursuant to those requirements, plan participants can receive a "list of the assets comprising the portfolio of each designated investment alternative * * * and the value of each such asset (or the proportion of the investment which it comprises)." 29 C.F.R. 2550.404a-5(d)(4)(iv); see, *e.g.*, J.A. 578 (listing the asset allocation of Intel's global diversified fund); J.A. 679-680 (same for Intel's target-date fund). With that information, plan participants can identify meaningful benchmarks by using publicly available information about similar assets or by calling on investment professionals to draw comparisons to the assets included in their plans.

In addition, fiduciaries often provide their own benchmarks designed to track each fund's expected performance, so that fiduciaries can monitor fund performance and plan participants can evaluate which fund to select. The Department of Labor recently proposed a rule that would encourage that practice. 91 Fed. Reg. 16,088, 16,101 (Mar. 31, 2026). Indeed, the proposed rule provides an example of a benchmark for a fund that "contains a private equity sleeve, as well as publicly traded stocks and bonds." *Id.* at 16,102; see *id.* at 16,143. The Department explains that an appropriate benchmark for that type of fund could be a composite, using "securities market indices relative of and in proportion to the stock and bond holdings," and (for the private equity sleeve) "a combination of methodologies commonly used by investment professionals, including the internal rate of return method and a public market equivalent method." *Id.* at 16,102; see *id.* at 16,143. Where a fiduciary identifies its own benchmark and asserts that it is

meaningfully similar to the fund at issue, that benchmark should qualify as a meaningful benchmark for purposes of pleading a claim based on underperformance. See, *e.g.*, *Terraza* v. *Safeway Inc.*, 241 F. Supp. 3d 1057, 1076 (N.D. Cal. 2017).

As a further reason to reject a meaningful-benchmark requirement, petitioners express concern that it will be difficult to determine how closely a comparator must resemble the fiduciary's chosen fund. Pet. Br. 49-50. Those courts that have required a meaningful benchmark have appropriately sought comparators that are similar—not identical—to the challenged funds. See, *e.g.*, Pet. App. 14a ("similar risk-mitigation strategies and objectives"); *Matney*, 80 F.4th at 1148 ("similar investment strategies, similar investment objectives, or similar risk profiles"); *Matousek* v. *MidAmerican Energy Co.*, 51 F.4th 274, 281 (8th Cir. 2022) (explaining that the suitability of one fund as a benchmark for another depends on "whether [the funds] hold similar securities, have similar investment strategies, and reflect a similar risk profile").

District courts in those circuits do not appear to have struggled to apply that standard. Those courts have rejected proposed comparators where the funds had significant differences in "concentrations of bonds," "numbers of underlying funds," and "glide path strategies," which reflect different investment and risk-mitigation strategies. *Parmer* v. *Land O'Lakes, Inc.*, 518 F. Supp. 3d 1293, 1306 (D. Minn. 2021); see *Phillips* v. *Cobham Advanced Electronic Solutions, Inc.*, No. 23-cv-3785, 2025 WL 2689268, at *7 (N.D. Cal. Sept. 19, 2025). And they have accepted comparators where the asserted benchmarks had the "same benefits and expectation of returns," even where other differences existed. *Payne*

v. *Hormel Foods Corp.*, No. 24-cv-545, 2024 WL 4228613, at *7 (D. Minn. Sept. 18, 2024); see *Clinton* v. *Baxter Int'l Inc.*, No. 25-cv-3368, 2025 WL 3470685, at *5 (N.D. Ill. Dec. 3, 2025). Concerns with the appropriate degree of similarity provide no basis to excuse plaintiffs from pleading sufficient facts to render their comparisons meaningful.

C. The Court Of Appeals Correctly Held That Petitioners' Complaint Failed To State A Claim For A Breach Of The Duty Of Prudence

The question presented does not require the Court to consider whether the comparators petitioners identified suffice if a meaningful benchmark is required. Nor does this case call upon the Court to address whether petitioners' allegations separate from their underperformance theory are adequate to state a claim. In any event, the court of appeals correctly analyzed both of those issues.

Petitioners did not allege that any of the comparators they had identified pursued a risk-mitigation strategy similar to Intel's. Instead, petitioners alleged that their selected comparators for the target-date and global diversified funds were commonly used as representative benchmarks by institutional investors and fiduciaries when selecting and monitoring investment funds. J.A. 61-62, 96. But the fact that a comparator is commonly used does not indicate that it has relevant features in common with Intel's funds, particularly where petitioners allege that Intel pursued an outlier strategy. Pet. App. 57a. Petitioners further asserted that target-date funds "generally share" common "goals and features," J.A. 63, suggesting that any target-date fund could serve as a meaningful benchmark for any other. Petitioners' complaint also acknowledged, how-

ever, that "there are considerable differences among [target-date funds] offered by different providers," including "different investment strategies, glide paths, and investment-related fees." J.A. 67 (emphasis omitted). As the court of appeals explained, the comparators that petitioners chose were "equity-heavy retail funds that pursued different objectives—typically revenue generation"—and could not serve as meaningful comparators for funds that prioritized mitigation of risk. Pet. App. 14a.

Petitioners repeatedly assert (Br. 2-3, 11, 20, 24, 38-39) that the funds underperformed benchmarks that the fiduciaries themselves had identified. That is incorrect. For the target-date funds, the district court correctly explained that plan documents incorporated by reference into the complaint showed that petitioners were mistaken in claiming that the funds were benchmarked to the Morningstar peer group category. Pet. App. 59a. The relevant documents instead show that the funds were benchmarked to a customized composite that petitioners did not use as a comparator. See J.A. 671.

Petitioners make a similar error in identifying Intel's designated benchmark for the global diversified fund. Their complaint alleged that respondents had described both a customized composite and the MSCI World Index as benchmarks for the global diversified funds, and further alleged that the funds had underperformed the latter. Pet. App. 63a; see J.A. 93, 96. But petitioners' allegations ignore the distinction between two types of benchmarks: a general-disclosure benchmark that is not intended to track the performance of a particular fund, and a secondary benchmark that is.

A general-disclosure benchmark is mandated by Department of Labor regulations, which require plan fidu-

ciaries to disclose to plan participants "the name and returns of an appropriate broad-based securities market index over the 1-, 5-, and 10-calendar year periods * * * comparable to the [relevant] performance data periods" for investment options like the target-date funds and global diversified funds at issue here. 29 C.F.R. 2550.404a-5(d)(1)(iii). That general-disclosure benchmark is not intended to track the expected return of the specific investments on the menu. It is instead meant to provide plan participants with a broad picture of the securities market to help plan participants "assess[ ] the various investment options available under their plans." 75 Fed. Reg. 64,910, 64,916 (Oct. 20, 2010).

Recognizing that a securities-market index would not track all available investment options, the Department has explained that for "investment alternatives that have a mix of equity and fixed income exposure," like the funds at issue here, a plan administrator may provide an additional benchmark designed to track "the actual equity and fixed-income holdings" of the fund. 75 Fed. Reg. at 64,917. It is that secondary benchmark that shares relevant characteristics with the funds and may therefore serve as a meaningful comparator. In pointing to the MSCI World Index, petitioners incorrectly rely on the securities-market index, which was never intended to perform that type of comparative function. See J.A. 637 (describing the custom benchmark as having the "same asset allocation" as Intel's global diversified fund, and the MSCI World Index as "measur[ing] the performance of the large and mid cap segments of world equity securities"). Indeed, petitioners' own expert explained that the MSCI World Index "is not a plausible benchmark" because Intel's global diversified fund "had made material allocations to non-

equity assets and MSCI World is an equity index." J.A. 267.

Finally, the court of appeals correctly held that petitioners' "general arguments about the riskiness and costliness of hedge funds and private equity funds" as an asset class are insufficient to state a claim. Pet. App. 20a. "[G]enerally, the relative riskiness of a specific investment or investment course of action does not render such investment or investment course of action either *per se* prudent or *per se* imprudent." 44 Fed. Reg. 37,221, 37,222 (June 26, 1979); see 91 Fed. Reg. at 16,091 ("ERISA contains no categorical restrictions on investment type."); J.A. 986 (Department of Labor information letter opining that a plan fiduciary "may offer an asset allocation fund with a private equity component"). Instead, whether a fiduciary's choice of a particular investment is consistent with the duty of prudence must be assessed "as the investment relates to the portfolio as a whole." Pet. App. 16a (citation omitted). Because petitioners did not allege that any of the particular hedge funds or private equity funds in which Intel invested "were particularly risky, individually or in the aggregate," *id.* at 18a, petitioners' concerns with the asset class in general could not state a claim, with or without the complaint's allegations regarding the funds' performance.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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