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 RESPONDENTS

MYRON D. RUMELD
PROSKAUER ROSE LLP
Eleven Times Square
New York, NY 10036
(212) 969-3000

LISA S. BLATT
Counsel of Record
DANIEL F. KATZ
DAVID S. KURTZER-ELLENBOGEN
CHARLES L. MCCLOUD
KEES D. THOMPSON
ROHIT P. ASIRVATHAM
JONATHAN M. ARTAL
ARZU SINGH
WILLIAMS & CONNOLLY LLP
680 Maine Avenue, S.W.
Washington, DC 20024
(202) 434-5000
lblatt@wc.com

QUESTION PRESENTED

The petition states the question presented as:

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 plaintiffs in the District Court for the Northern District of California and appellants in the Ninth Circuit Court of Appeals.

Respondents Intel Corporation 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 in the district court and appellees in the Ninth Circuit Court of Appeals.

Intel Corporation (NASDAQ: INTC), which is a publicly traded corporation, is not itself a party to this action.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

Cases:

Page

Cases—continued:

Page

Cases—continued:

Page

Statutes, Regulations, and Rules:

Other Authorities:

Page

Other Authorities—continued:

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 RESPONDENTS

STATEMENT

ERISA fiduciaries are governed by a duty of prudence. That duty is a duty of process, not performance. Fiduciaries must adequately investigate and monitor investments, but they do not guarantee a particular level of return. A fiduciary does not violate the duty of prudence by selecting investments that deliver a 5% return just because the investments selected by some other fiduciary achieved 10%. And different ERISA funds can, should, and do have different aims and risk profiles. "ERISA fiduciaries are not required to adopt a riskier strategy simply because the strategy may increase returns." Pet.App.15a.

This case concerns target date funds ("TDFs") offered as investment options to Intel employees in the company's 401(k) Plan and the Global Diversified Fund ("GDF") offered as an investment option to employees in the company-funded Retirement Contribution Plan (collectively "the Funds"). In the wake of the 2008 financial crisis, when some equity-heavy retirement plans lost over half their value, the plans' fiduciaries (respondents here) adopted the goal of minimizing the dispersion of retirement outcomes by decreasing volatility and reducing the risk of large losses during market downturns. As required by ERISA, respondents disclosed this goal and their risk-mitigation strategy to participants, explaining that they had created customized, broadly diversified portfolios to prioritize "decreasing volatility and reducing the risk of large losses during a market downturn." Pet.App.7a. Respondents also "disclosed the price that participants would pay for this risk mitigation," stating explicitly that "funds would not compare favorably with equity-heavy funds during bull markets." Pet.App.7a; J.A.617.

The Funds operated exactly as intended. While other equity-heavy funds generally performed better than Intel's Funds during the historic bull market that followed the Great Recession, the Funds still delivered significant returns for their participants, while also reducing volatility and delivering superior returns in down years.

Petitioners sued several years into the historic bull market. They did not directly plead that respondents had engaged in an imprudent process. Instead, petitioners sought an inference that respondents lacked care, skill, and diligence in administering the Funds based on allegations that the Funds had underperformed more equity-heavy funds.

The question presented is whether, for claims like petitioners' that are "predicated on fund underperformance," a complaint plausibly alleges fiduciary imprudence based on a comparison to alternative funds that are not meaningfully similar to the challenged fund. *See* Pet. i. The answer is no.

Meaningful comparisons require meaningful comparators. A five-year-old's complaint that she has an earlier bedtime than her brother does not create a plausible inference that she is being treated unfairly if her brother is a senior in high school. That a Porsche 911 might "outperform" a Toyota Camry does not mean Toyota lacked care, skill, or diligence in designing the Camry. And the prices for off-the-rack suits do not permit any inference about whether a shop on Savile Row is overcharging for a custom-tailored garment.

The same principle applies here. To overcome a motion to dismiss, petitioners' allegations must create a plausible inference that the alleged underperformance was caused by an imprudent process. But the mere existence of a delta in performance between one fund and another does not generate a plausible inference of imprudent process. It generates no inference at all. *Every* fund in existence save for one underperforms some other fund over a given timeframe. Allegations that a defendant's fund is one of the 99.99% are simply not probative of imprudent administration.

Moreover, in the ERISA context, plaintiffs must plead facts that "rule out" what may be an "obvious alternative explanation[]," *Hikma Pharms. USA Inc. v. Amarin Pharma, Inc.*, 146 S. Ct. 1391, 1399 (2026) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 567 (2007)), for a variation in outcome between one fund and another: Different funds with different aims and different

levels of risk tolerance *intend* to achieve different outcomes. Some are equity-heavy index funds that try to mirror the stock market—up and down. Others seek to shield retirement savings from excessive volatility. ERISA embraces such variation; it does not punish it.

Thus, to generate the required inference of an imprudent process, allegations of underperformance must be benchmarked against a meaningful comparator that obtained better results while pursuing similar aims. Requiring an apples-to-apples comparison also follows from ERISA's text. As petitioners conceded below, "[t]he statute commands comparisons to similarly situated fiduciaries as it 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***.'" D. Ct. Dkt. 122 at 7 (quoting 29 U.S.C. § 1104(a)(1)(B)) (boldface and italics in original). That requirement implements ERISA's directive to give "due regard to the range of reasonable judgments a fiduciary may make," *Hughes v. Nw. Univ.*, 595 U.S. 170, 177 (2022), by avoiding the type of Monday-morning quarterbacking that permeates petitioners' complaint.

Petitioners' contrary arguments are unpersuasive. The meaningful-benchmark standard is not an improper heightened pleading requirement. It is simply what *Twombly/Iqbal* plausibility analysis looks like when applied to claims of imprudence based on allegations that an investment "underperformed." Nor does the meaningful-benchmark standard pose an insurmountable barrier for plaintiffs. A comparator need only be similar enough to make the comparison "meaningful" as opposed to "meaningless." A dead ringer with an identical asset

allocation is not required. Here, for example, petitioners' own allegations confirm that there is nothing novel about a risk-mitigation strategy, yet petitioners never attempted to compare Intel's Funds to other funds with that common goal.

Petitioners' generic criticisms of hedge funds and private equity do not change the analysis. Petitioners are wrong that the Ninth Circuit "ignored" their broadsides against supposedly "nontraditional" assets. To the contrary, the court considered those allegations and concluded (1) that petitioners' *per se* attack on hedge funds and private equity was contrary to well-established law, and (2) that petitioners had failed to allege that the *specific* hedge fund and private equity investments held in the Intel Funds in any way reflected imprudence. Those case-dependent conclusions do not rise and fall with the existence of a meaningful-benchmark standard.

This Court should affirm.

A. Statutory Background

Enacted in 1974, ERISA "represents a 'careful balancing' between ensuring fair and prompt enforcement of rights under a [retirement] plan and the encouragement of the creation of such plans." *Conkright v. Frommert*, 559 U.S. 506, 517 (2010) (citation omitted). Courts interpreting ERISA consider the "competing congressional purposes, such as 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).

For fiduciaries entrusted with the administration of employee benefit plans, ERISA imposes a "prudent man" standard of care. 29 U.S.C. § 1104(a)(1)(B). This duty requires plan fiduciaries to exercise "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." *Id.* Practically speaking, the duty of prudence requires plan administrators to select initial investment options with care, monitor those investments, and remove imprudent ones as needed. *Tibble v. Edison Int'l*, 575 U.S. 523, 529-30 (2015).

B. Factual Background

1. Respondents are three fiduciary committees and their individual members that were entrusted with overseeing and managing certain retirement plans for Intel employees. J.A.18-29. The individuals are experienced professionals with distinguished careers in many fields. They include a Wharton finance professor and former Federal Reserve staff member, the former CEO of Charles Schwab, the former CEO of Nike, the former Global Head of Mergers and Acquisitions at Citigroup, a former U.S. Trade Representative, a former head of the Federal Communications Commission, and Intel Corporation's then-Treasurer. J.A.18-29.

Intel sponsors two defined-contribution plans—the Intel Retirement Contribution Plan and the Intel 401(k) Savings Plan (the "Plans"). Pet.App.5a-6a. The former is "funded by Intel contributions," and the latter is "funded by employee contributions and nonmatching discretionary employer contributions." J.A.428. Both plans provided various investment options, ranging from professionally managed funds to self-directed funds permitting

participants to research, review, trade, and rebalance their own portfolios. J.A.453-57. These investment options "each have different investment objectives and, consequently, different elements of risk and potential for growth." J.A.463-64.

At issue in this case are the Global Diversified Fund ("GDF") offered as an investment option by the Retirement Contribution Plan, and the target date funds ("TDFs") offered as investment options by the 401(k) Savings Plan.

The GDF. The GDF employed a broadly diversified asset-allocation model with holdings in stocks and bonds, as well as hedge funds, commodities, and private equity. J.A.576. The GDF had an expressly disclosed target of a 5% real annual return. J.A.584. Its performance was measured against benchmarks determined by the fiduciaries and expressly disclosed to participants, including a customized benchmark made up of a composite of the underlying benchmarks for each asset class. J.A.637.

The TDFs. The TDFs were among the investment options that participants in the 401(k) Savings Plan could choose. Pet.App.37a. The TDFs were blended funds that generally contained the same categories of investments as the GDF, but without private equity investments. Their relative allocations to stocks, bonds, and other assets gradually shifted along a "glide path" from more aggressive to more conservative as a participant's target retirement date approached. Pet.App.37a; J.A.592. Each TDF's performance was measured against a customized benchmark made up of a composite of the underlying benchmarks for each asset class within that TDF. J.A.676; Pet.App.13a. Like with the GDF, these benchmarks were disclosed to participants. J.A.676, 708.

2. An express objective of the Funds was "to minimize dispersion of outcomes for plan participants" by focusing on "downside protection." J.A.559. In other words, the Funds were designed to mitigate risk and dampen volatility, not to maximize returns during a bull market. Respondents adopted this risk-mitigation strategy following the 2008 financial crisis, when a market crash resulted in some equity-heavy funds losing nearly half their value. *See* Pet.App.6a-7a; J.A.1008-09.

One way respondents pursued this risk-mitigation goal was by diversifying the Funds' holdings to include investments in hedge funds and private equity—"assets whose returns are less correlated to equity markets." Pet.App.13a. Respondents were not alone. By 2010, 92% of large defined-benefit plans invested in private equity and 60% invested in hedge funds. J.A.956. As the Investor's Committee of the President's Working Group on Financial Matters noted in 2008, including such assets in an investment portfolio can "offer opportunities for fiduciaries and investors to improve the likelihood of achieving their investment objectives," J.A.749, due in part to their ability "to offset a portfolio's exposure to traditional market risks, or to add to a portfolio's absolute return." J.A.725; *see also* J.A.976 (GAO report recognizing that non-traditional assets "serve useful purposes in a well-thought-out investment program").

The Plans explicitly disclosed to participants the risk-mitigation goal adopted for the Funds, the strategy chosen to achieve the goal, and the associated risks and costs. Participants were informed that the Funds prioritized "decreasing volatility and reducing the risk of large losses during a market downturn." Pet.App.7a. Respondents also explicitly "disclosed the price that participants would pay for this risk mitigation," including

that "funds would not compare favorably with equity-heavy funds during bull markets." Pet.App.7a; J.A.617. And respondents explained that the strategy's exposure to alternative assets, including hedge funds and private equity, would entail higher active-management fees. J.A.577, 651.

3. The Funds' carefully designed strategy performed as planned. From 2011 through 2018, the GDF's average return not only met but exceeded its express target of a 5% real annual return. J.A.604, 631. And while equity-heavy funds generally performed better than the TDFs during the bull market from 2011 through 2018, the TDFs still delivered strong returns and sometimes outperformed equity-heavy funds due to their reduced volatility. Indeed, every Intel TDF outperformed petitioners' purported Vanguard comparator in at least one year between 2011 and 2016, and multiple Intel TDFs outperformed those purported comparators in multiple years. J.A.84-86.

But as was expected and disclosed would happen during a bull market, the Funds did not keep pace with the returns of more aggressive, equity-heavy retail funds given the stock market's incredible run from 2011 through 2018, the last year for any performance comparisons in the complaint. J.A.577, 601, 617, 630.

C. Procedural Background

1. Petitioners Christopher Sulyma and Winston Anderson are former Intel employees who participated in the Plans and invested in the Funds. Pet.App.34a. Petitioners allege that "[t]he allocation of Intel TDF and GDF assets" harmed participants because the Funds' risk-mitigation strategy "gave up the long-term benefit of investing in equity, which delivers superior returns"

relative to other investment options. J.A.114. The putative class action names 24 defendants: the individual members of three Intel committees who served as plan fiduciaries over the relevant period, plus the committees and Plans themselves. Pet.App.34a-35a.

2. The district court dismissed the complaint, concluding that petitioners failed to state a claim. Pet.App.44a. The district court granted leave to amend, and petitioners filed an amended complaint in March 2021. Pet.App.44a-45a. Like the original complaint, the amended complaint sought an inference that respondents' process was imprudent in two main ways.

The complaint first alleged that the Plans should not have invested in hedge funds and private equity. In support of their attacks on these asset classes, petitioners cited to a personal finance column posted in 2014 on oregonlive.com, J.A.59, an independent investment advisor's personal "blog," J.A.59, a 2013 report commissioned by a labor union investigating a Rhode Island state pension fund, J.A.180, and various newspaper opinion pieces, J.A.179-80.[1] None of petitioners' allegations, however, concerned the specific hedge funds and private equity funds in which the Plans actually invested. Pet.App.18a, 20a.

The complaint also pointed to other investments that performed better than the Funds over certain years. In

---

[1] Petitioners quote many of these supposed authorities at length in their opening brief. *E.g.*, Pet. Br. 11, 18-19. Petitioners (at 17) also cite to a 2020 letter by the Department of Labor. The same letter confirms that private equity investments are permissible for all plans, including where, as here, they are "offered as part of a multi-asset class vehicle structured as a custom target date, target risk, or balanced fund." J.A.983.

particular, petitioners identified three supposed comparators for the Intel TDFs. First, "the S&P 500," Pet.App.56a—a broad equity market index that tracks the performance of 500 of the largest publicly traded companies in the United States. Second, "the Intel TDFs' 'peer group category' as defined by Morningstar, Inc.," Pet.App.56a—an average of a large group of TDFs that share a target date. And finally, "four TDF fund families," Pet.App.56a—two passively managed and two actively managed funds from large retail fund providers. According to the complaint, the Intel TDFs underperformed all three comparators. J.A.82-84, 87-88.

For the GDF, petitioners offered two comparators. First, "the 'Morningstar World Allocation Category,'" Pet.App.61a—an average of a group of funds that invest in global stocks and bonds. Second, "a traditional blend of 60% equities and 40% bonds," Pet.App.61a—an entirely hypothetical fund. According to the complaint, the GDF underperformed both benchmarks. J.A.96.

3. The district court again dismissed, this time with prejudice. Pet.App.83a. As with the prior dismissal order, the court concluded that petitioners had failed to demonstrate that their chosen comparator funds were appropriate benchmarks for the Funds and thereby failed to allege facts sufficient for a plausible inference of imprudence.

The district court also rejected petitioners' theory that no benchmark comparison was required because the overall investment strategy was imprudent. Pet.App.65a. Petitioners did not "cite a single case to support their new theory that a risk mitigation strategy can be deemed imprudent under the law." Pet.App.67a. "ERISA fiduciaries," the court emphasized, "are not required to

adopt a riskier strategy simply because that strategy may increase returns." Pet.App.66a-67a.[2]

4. The Ninth Circuit affirmed. The court began by noting that ERISA requires courts to "evaluate prudence prospectively, based on the methods the fiduciaries employed, rather than retrospectively, based on the results they achieved." Pet.App.10a. Given that prospective lens, "it is not enough for a plaintiff simply to allege that the fiduciaries could have obtained better results." Pet.App.10a. Rather, a plaintiff must provide "some further factual enhancement" for an inference of imprudence to be plausible. Pet.App.10a-11a. For a claim "relying" on underperformance, the court concluded that this enhancement comes in the form of "a sound basis for comparison." Pet.App.11a (quoting *Meiners v. Wells Fargo & Co.*, 898 F.3d 820, 822 (8th Cir. 2018)).

Applying that standard, the court observed that rather than comparing the Funds to available funds with similar risk-mitigation strategies and objectives, petitioners only "compare[d] Intel's funds to equity-heavy retail funds that pursued different objectives." Pet.App.13a-14a. Putative comparators with "different aims, different risks, and different potential rewards" than the Funds could not support petitioners' claims. Pet.App.13a-14a. The court applied the same reasoning to the allegations regarding the Funds' higher fees: "[C]omparison to [the fees of] off-the-shelf funds that did not seek to mitigate risk to the same degree as Intel's

[2] Petitioners abandoned two document-disclosure-related claims against the Administrative Committee members by not appealing their dismissal before the Ninth Circuit. C.A. Dkt. 25-1 at 27 n.11.

funds is not enough" to suggest that the fiduciaries neglected to follow a prudent process. Pet.App.15a.

Next, the court rejected petitioners' fallback argument that because Intel's allocation to hedge funds and private equity "was unusual, if not unparalleled," there were "no meaningful benchmarks for the fiduciaries' decision." Pet.App.15a. This argument, the court explained, "conflates the risk-mitigation objective of the Intel funds with the allocation decisions made to implement that objective." Pet.App.15a. Petitioners needed only to identify a comparator with a similar risk-mitigation objective, not one with identical investments—something petitioners were "well positioned to find." Pet.App.20a.

The court also rejected petitioners' allegations that hedge funds and private equity are "*inherently*" unsound investments. Pet.App.16a. "[T]he prudence of each investment is not assessed in isolation but, rather, as the investment relates to the portfolio as a whole." Pet.App.16a (citation omitted). And although petitioners denied that their theory was a *per se* challenge to the use of hedge fund and private equity investments, they "ma[de] only general arguments about the riskiness and costliness of hedge funds and private equity funds without providing factual allegations sufficient to support the claim that the investments that were actually made were ill-suited to the Intel funds." Pet.App.20a.

Judge Berzon concurred in full in the majority opinion, writing separately to emphasize that an imprudence claim does not always require allegations of comparative performance or fees. Judge Berzon noted that "[t]here are a myriad of circumstances that could violate the [prudent man] standard, so there is no fixed formula for the facts from which we might infer

imprudence." Pet.App.26a (citation omitted). The ultimate question is "whether the facts alleged—comparative or not—lead to the plausible inference that the actual process used by the defendant fiduciary was flawed." Pet.App.31a. Judge Berzon agreed that, in this case, petitioners failed to plead facts that supported an imprudence claim either directly or inferentially. Pet.App.31a.

SUMMARY OF ARGUMENT

I. The Ninth Circuit correctly held that petitioners' underperformance allegations failed to generate a plausible inference of a breach of the duty of prudence because petitioners did not identify any meaningfully similar comparators.

A. ERISA's text and the common law it draws upon confirm that fiduciaries may pursue a wide range of goals, strategies, and levels of risk tolerance. They are not required to pursue maximum returns at the expense of all other considerations. Fiduciaries are also judged prospectively based on the process employed in selecting and monitoring investments, not in hindsight based on how certain investments ultimately fared.

B. An allegation that a fund selected by a fiduciary underperformed *some* other alternative does not create a plausible inference of imprudent process. Every fund in existence but one will underperform some other alternative over a given timeframe. And there is often an "obvious alternative explanation," *Twombly*, 550 U.S. at 557, for one fund's underperformance compared to another: The funds had different aims and levels of risk tolerance. That a fund with the legitimate aim of minimizing volatility did not perform as well during a

market upswing as a fund with more aggressive aims does not plausibly imply an imprudent selection process.

ERISA's text and the common law likewise demand a comparison to similarly situated comparators. Indeed, petitioners conceded below that "[t]he statute *commands* comparisons to similarly situated fiduciaries," D. Ct. Dkt. 122 at 7 (emphasis added), by requiring prudence to be assessed against a hypothetical fiduciary "acting in a like capacity," and conducting an enterprise with "like character" and "like aims," 29 U.S.C. § 1104(a)(1)(B).

C. Petitioners' contrary approach would undermine ERISA's goals. That approach punishes risk-mitigation strategies, even though Congress sought to encourage such strategies. Petitioners' approach would also drive plan costs up, employee choice down, and skilled fiduciaries out of the profession. Given the eye-watering costs of discovery, many defendants are forced to settle even meritless cases. Yet petitioners would make it trivially easy for plaintiffs to defeat a motion to dismiss.

D. While petitioners contend that they did allege meaningful comparators in their complaint, this Court did not grant review of that fact-bound question. Nevertheless, the Ninth Circuit was right: The comparators that petitioners pleaded—predominantly passively managed, equity-heavy retail funds—had entirely different aims and risk profiles than the Funds. Petitioners could have "present[ed] a comparison to Intel's [internal] composite benchmarks or to available funds with similar risk-mitigation strategies and objectives." Pet.App.13a-14a. They chose not to do so.

II. Petitioners' counterarguments are unpersuasive.

A. Petitioners' assertions that the meaningful-benchmark requirement imposes a heightened pleading

burden misunderstand the requirement. The requirement merely recognizes that under the established *Twombly/Iqbal* standard certain allegations do not state a plausible claim to relief. This Court regularly draws clear lines at the pleading stage regarding what allegations will and will not suffice. In fact, *Fifth Third Bancorp v. Dudenhoeffer*, 573 U.S. 409, 426-28 (2014), crafted *two* categorical rules for certain kinds of imprudence claims. The meaningful-benchmark standard applies the same reasoning to claims predicated on underperformance.

B. Petitioners claim that a meaningful-benchmark requirement will screen out even complaints that do plausibly allege a breach of the duty of prudence. But all that is required is that the complaint's alleged comparator be a "meaningful" one. Pet.App.12a, 15a (citation omitted). By definition, "meaningless" comparators do not provide meaningful information, so they cannot plausibly state a claim.

C. Nor does a meaningful-benchmark requirement ask courts to "ignore" allegations. The Ninth Circuit did not require "that a plaintiff must *always* identify a comparator when relying on circumstantial allegations of a breach of the duty of prudence." Pet.App.11a; *see also* Pet.App.31a (Berzon, J., concurring). But plaintiffs must do so when a "plaintiff *simply* … allege[s] that the fiduciaries could have obtained better results … by choosing different investments," Pet.App.10a (emphasis added)—or, in the words of the question presented, when a claim is "predicated on fund underperformance," Pet. i.

D. Petitioners' policy arguments are wrong. A meaningful-comparator requirement is not an onerous one. Courts have applied it for years and ERISA lawsuits and settlements have become more common, not less. Real-world cases show that the requirement is regularly

satisfied for meritorious claims. Petitioners incorrectly protest that the Ninth Circuit would require plaintiffs challenging "outlier" investments to find comparators that are identically "novel." Yet the Ninth Circuit was clear that petitioners needed only to identify comparators with similar aims, not comparators with an identical allocation of investments. And while petitioners contend that ERISA plaintiffs lack sufficient information about funds to identify meaningful comparators, ERISA requires extensive disclosures about fund aims, strategy, and composition.

Nor is the meaningful-comparator requirement unworkable. To the contrary, the requirement provides much needed scaffolding for district courts evaluating claims predicated on allegations that one plan performed worse than some other investment option. Petitioners' alternative, know-it-when-you-see-it approach would leave district courts entirely at sea. ERISA invites no such chaos.

ARGUMENT

I. The Ninth Circuit Correctly Affirmed Dismissal Because Petitioners' Complaint Failed to Allege a Sound Basis for Comparison

Petitioners complain that although the Funds made money, they did not make *as much* money as certain equity-heavy off-the-shelf funds. Claims like petitioners' that are "predicated on fund underperformance," Pet. i, require allegations that the fund underperformed something else. And as the Ninth Circuit correctly held, if a plaintiff relies "on a theory that 'a prudent fiduciary in like circumstances would have selected a different fund based on the cost or performance of the selected fund,' that plaintiff 'must provide a sound basis for comparison.'"

Pet.App.11a (quoting *Meiners v. Wells Fargo & Co.*, 898 F.3d 820, 822 (8th Cir. 2018)). The Ninth Circuit also correctly determined that petitioners' allegations failed to meet that standard.

A. ERISA Requires Prudent Process, Not Performance

1. ERISA "requires the fiduciary of a pension plan to act prudently in managing the plan's assets." *Dudenhoeffer*, 573 U.S. at 411-12. In Congress' words, fiduciaries must "discharge [their] duties … 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 text establishes several basic principles relevant here.

First, fiduciaries may pursue a wide range of aims and decide on an appropriate level of risk tolerance. As this Court has cautioned, "the circumstances facing an ERISA fiduciary 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 v. Nw. Univ.*, 595 U.S. 170, 177 (2022). ERISA does not require trustees to pursue the highest possible returns, and administrators "are not required to adopt a riskier strategy simply because that strategy may increase returns." Pet.App.15a; *see Pizarro v. Home Depot, Inc.*, 111 F.4th 1165, 1181 (11th Cir. 2024) (fiduciaries typically cannot be held liable for "being too conservative" (citation omitted)), *cert. denied*, 146 S. Ct. 537 (2026); *Jenkins v. Yager*, 444 F.3d 916, 925 (7th Cir. 2006).

In fact, undue focus on maximizing returns could violate fiduciaries' duty to "diversify[] the investments of

the plan so as to minimize the risk of large losses." 29 U.S.C. § 1104(a)(1)(C). ERISA instead adopts the principles of modern portfolio theory, which recognizes that risk can (and should) be managed through the diversification of investment assets. *See DiFelice v. U.S. Airways, Inc.*, 497 F.3d 410, 423 (4th Cir. 2007).

Second, ERISA "requires prudence, not prescience." Pet.App.10a (quoting *DeBruyne v. Equitable Life Assurance Soc'y*, 920 F.2d 457, 465 (7th Cir. 1990)). Congress instructed courts to evaluate the fiduciary's conduct "under the circumstances *then prevailing*" at the time the investment was made. 29 U.S.C. § 1104(a)(1)(B) (emphasis added). "A court's task," therefore, is to evaluate whether the fiduciary "employed the appropriate methods to investigate the merits of the investment and to structure the investment." *Fink v. Nat'l Sav. & Tr. Co.*, 772 F.2d 951, 955 (D.C. Cir. 1985) (citation omitted). Put differently, "[t]he process is what ultimately matters, not the results." *Matousek v. MidAmerican Energy Co.*, 51 F.4th 274, 278 (8th Cir. 2022). Thus, if a fund met its own disclosed investment objectives, "the fact that [it] is outperformed by many others will have little bearing in a court test of prudence." Bruce W. Marcus, *The Prudent Man: Making Decisions Under ERISA* 77 (1978).

2. The common law from which ERISA developed points in the same direction. Just like under ERISA, a common law duty-of-prudence claim requires a deficient process, not suboptimal performance standing alone. *See Johnson v. Parker-Hannifin Corp.*, 122 F.4th 205, 226-27 (6th Cir. 2024) (Murphy, J., dissenting) (collecting cases). As the common law well understood, "[i]f stock market prices are to be the guide of a fiduciary's care and prudence … then a justified investment one day might be unjustified and the fiduciary deemed careless and

negligent if the stock went down in price at the opening of the exchange the next morning." *In re Est. of Cuddeback*, 6 N.Y.S.2d 493, 497 (Sur. Ct. 1938). The common law rejects that nonsensical result, making clear that the test "is one of conduct not of performance." Restatement (Third) of Trusts § 77 cmt. a (A.L.I. 2007); *accord id.* § 90 cmt. e(1); Restatement (Second) of Trusts § 227 cmt. o (A.L.I. 1959).

Moreover, because "[t]rustees are [neither] insurers nor guarantors," *In re Lathers' Will*, 243 N.Y.S. 366, 376 (Sur. Ct. 1930), the common law recognizes that "[p]roof only of the loss or shrinkage in value … without any proof of want of care or prudence … does not establish negligence and does not present a prima facie case," *Cuddeback*, 6 N.Y.S.2d at 497. Thus, as Justice Holmes put it when presented with such a claim while serving on the Massachusetts Supreme Judicial Court, "[i]t is impossible" to conclude based on the "bare fact[]" that an asset decreases in value "that the trustees … were wanting in sound discretion." *Green v. Crapo*, 62 N.E. 956, 957 (Mass. 1902).

Also like ERISA, the common law recognizes that fiduciaries operate under a wide range of "objectives, circumstances, and overall plan[s] of administration." *See* Restatement (Third), *supra*, § 77 cmt. b. The common law therefore pegs the duty of prudence to the actions of "an ordinarily prudent person engaged in *similar* business affairs and with objectives *similar* to those of the trust in question." Amy M. Hess et al., *Bogert's The Law of Trusts and Trustees* § 541 (updated May 2026) (emphasis added). In determining what is a prudent investment, due consideration must be given to "a number of factors, including the objectives of the settlor or testator, the circumstances of the beneficiaries, the economic

environment and the merit of the particular investment action." *Id.* § 612.

B. To Create a Plausible Inference of Imprudent Process, Allegations of Underperformance Must Be Judged Against a Meaningful Comparator

Petitioners claim that respondents improperly allocated the Funds' assets into investments with higher fees and lower returns than certain other available options. But to "state a claim to relief that is plausible on its face," *Twombly*, 550 U.S. at 570, a plaintiff must do more than simply allege that one fund underperformed or cost more than another. The complaint must warrant "the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). And for claims predicated on fund underperformance, the "key to nudging an inference of imprudence from possible to plausible is providing a sound basis for comparison—a meaningful benchmark—not just alleging that costs are too high, or returns are too low." Pet.App.12a (cleaned up).

1. That conclusion follows from applying the established *Twombly-Iqbal* standard to ERISA's duty of prudence. Because ERISA focuses on process, not results, allegations of underperformance must support "a plausible inference that the [fiduciary's] decision-making process itself was flawed." *Matousek*, 51 F.4th at 280. But given the wide variety of strategies ERISA fiduciaries may legitimately employ, variation in two funds' performance does not, standing alone, generate any inference of imprudent process at all. Just as "[c]omparing apples and oranges is not a way to show that one is better or worse than the other," *Davis v. Wash. Univ. in St. Louis*, 960 F.3d 478, 485 (8th Cir. 2020), "the fact that one fund with a different investment strategy

ultimately performed better does not establish anything about whether the challenged funds were an imprudent choice at the outset," *Smith v. Common Spirit Health*, 37 F.4th 1160, 1166 (6th Cir. 2022) (cleaned up). Cursory allegations of underperformance do not create a plausible inference that disparate results "are caused by a fiduciary's bad decisions rather than by the usual vagaries of the market." *Pizarro*, 111 F.4th at 1176, 1181.

At most, allegations of differing performance are "'merely consistent with' a defendant's liability." *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 557). But that is not enough to state a claim. *Twombly* illustrates the point. The plaintiffs there claimed that major telecommunication providers had violated the antitrust laws by conspiring to restrain trade. 550 U.S. at 550-51. To back that claim, the plaintiffs alleged parallel behavior by those providers, including decisions to avoid competing in particular geographic areas. *Id.* Those allegations, the Court acknowledged, were "consistent with conspiracy." *Id.* at 554. But they were "just as much in line with a wide swath of rational and competitive business strategy." *Id.* So the allegations fell short.

The same is true for ERISA underperformance claims. It is *conceivable* that one fund performed worse than another because the first fund's fiduciaries were asleep at the switch. But to survive a motion to dismiss, plaintiffs must "nudge[] their claims across the line from conceivable to plausible." *Id.* at 570. And as Chief Judge Sutton has explained, the "disappointing performance [of one fund] by itself does not conclusively point towards deficient decision-making, especially when we account for 'competing explanations' and other 'common sense' aspects of long-term investments." *Smith*, 37 F.4th at 1167 (citation omitted).

Moreover, even if a difference in performance were indicative of liability, a plaintiff must still "rule out 'obvious alternative explanation[s]'" for the alleged underperformance. *Hikma Pharms. USA Inc. v. Amarin Pharma, Inc.*, 146 S. Ct. 1391, 1399 (2026) (quoting *Twombly*, 550 U.S. at 567) (alteration in original). And in the ERISA context, one "'obvious alternative explanation'" is that "the challenged fund has a lower risk (and so a lower chance of a higher return)." *Parker-Hannifin*, 122 F.4th at 231 (Murphy, J., dissenting) (quoting *Twombly*, 550 U.S. at 567).

As explained above, *supra* pp. 18-19, ERISA expressly allows trustees to pursue different aims. Some funds may be more aggressive, while others are more conservative. Some funds may determine that actively managed funds are worth the higher cost, while others may prefer passively managed ones. Some funds may prioritize long-term gains, while others may operate on shorter timelines. The myriad aims and strategies that may be chosen by different fiduciaries employing prudent processes can produce—indeed, are highly likely to produce—different outcomes for plan participants. For example, a growth-oriented fund with a 70/30 equity/bond allocation and a capital-preservation-oriented fund with a 30/70 allocation will produce meaningfully different returns in a bull or bear market, regardless of how carefully the individual investments are picked. The difference in performance is not evidence of imprudence; it is a consequence of the different goals of the funds.

Accordingly, "it is not enough for a plaintiff simply to allege that the fiduciaries could have obtained better results." Pet.App.10a. Nor are hindsight-driven "labels and conclusions" about fees and returns sufficient. *Twombly*, 550 U.S. at 555. Rather, a plaintiff must provide

"some further factual enhancement" for an inference of imprudence to be plausible. Pet.App.10a-11a (citation omitted). So when a plaintiff asks for an inference of imprudence simply based on the relative performance or cost of an investment fund, the plaintiff must plead *why* that relative comparison is probative. "Just as comparison can be the thief of happiness in life, so it can be the thief of accuracy when it comes to two funds with separate goals and separate risk profiles." *Smith*, 37 F.4th at 1167.

2. ERISA itself incorporates the concept of judging performance against a meaningful comparator. Petitioners (at 3) cast the requirement as "atextual," yet they conceded below that "[t]he statute commands comparisons to similarly situated fiduciaries as it 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***.'" D. Ct. Dkt. 122 at 7 (quoting 29 U.S.C. § 1104(a)(1)(B)) (boldface and italics in original). By identifying a meaningfully similar benchmark, a plaintiff can plausibly allege that "a hypothetical prudent fiduciary in the same circumstances as the defendant, armed with the information that a proper evaluation would have yielded, would not (or could not) have made the same choice." *Pizarro*, 111 F.4th at 1176, 1181.

Absent an allegation that fees or results were abnormal when measured against *comparable* investments, the allegation of "underperformance" is conclusory, and cannot yield a plausible inference that a prudent fiduciary pursuing "like aims," 29 U.S.C. § 1104(a)(1)(B), would have made different decisions. That is especially true given that different funds *intend*

different outcomes using different investments. Petitioners' own amended complaint acknowledges that "[d]etermining an appropriate benchmark for a given fund or manager depends largely on the stated investment strategy and the actual investments of the fund." J.A.62. The meaningful-benchmark requirement likewise recognizes that, when comparing performance or fees, a fiduciary who employs an actively managed risk-mitigation strategy does not have the same aims as a fiduciary employing a passively managed return-maximization strategy, and plainly has different aims from the aggregated strategies of an entire index of hundreds of funds.

Petitioners (at 40) read *Dudenhoeffer* as rejecting the notion that ERISA funds are to be judged against other funds of a "like character" that pursue "like aims." But *Dudenhoeffer* held only that courts should not take account of idiosyncratic "*nonpecuniary* goals" in judging the prudence of investment decisions. 573 U.S. at 420 (emphasis added). The petitioners there sought to be judged differently based on their nonpecuniary aim of "promot[ing] employee ownership of employer stock." *Id.* The Court rejected that argument because "like character" and "like aims" refer "to the sort of *financial*" character and aims that are the traditional focus of ERISA fiduciaries. *Id.* at 421. *Dudenhoeffer* does not hold that the performance of a fund with a risk-mitigation goal can be judged against ones with more risk-tolerant growth goals or vice versa.

Moreover, while *Dudenhoeffer* recognizes that the general enterprise is the same for all ERISA fiduciaries (providing benefits while defraying expenses), *id.* at 420, it does not require that the *manner* in which fiduciaries pursue that enterprise—including investment goals, risk

tolerances, and investment approaches—be the same. A fiduciary pursuing risk mitigation is conducting the same enterprise as one pursuing aggressive growth, but doing so with different investment goals. ERISA's references to "like capacity," "like character," and "like aims" necessarily contemplate this variation. The meaningful-benchmark requirement does the same, and in that way helps courts "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.

C. Requiring Meaningful Comparisons Furthers ERISA's Goals

Requiring plaintiffs to compare the performance of challenged funds to others with "like characteristics" and "like aims" is consistent with ERISA's broader design. Congress crafted ERISA to authorize a range of goals, a range of risk profiles, and a "range of reasonable judgments." *Hughes*, 595 U.S. at 177; *supra* pp. 18-19. Funds that differ along those dimensions will virtually always produce different returns over a given period. If plaintiffs could overcome Rule 12(b)(6) motions merely by pointing to that delta in performance, they could subject fiduciaries to burdensome discovery for acting exactly as Congress contemplated and authorized.

Risk Mitigation. The years before ERISA's enactment saw the "great personal tragedy" of American workers' losing their security in retirement. *Nachman Corp. v. Pension Ben. Guar. Corp.*, 446 U.S. 359, 374 (1980) (citation omitted). Through ERISA, Congress encouraged risk mitigation. The statute directs fiduciaries to "diversify[] the investments of the plan so as to minimize the risk of large losses." 29 U.S.C. § 1104(a)(1)(C). As the courts of appeals "routinely" hold,

a fiduciary does not "violate the duty of prudence by seeking to minimize risk." Pet.App.15a-16a.

Under petitioners' approach, however, a fiduciary's considered and intentional decision to hedge against risk invites years of burdensome and expensive discovery. If allowed to use hindsight to cherry-pick the comparison, plaintiffs can tee up a measuring contest that risk-averse funds will invariably lose whenever markets rise. Whenever markets are on the upswing, plaintiffs can present riskier investments as comparators to all funds that proceeded more cautiously. But Bitcoin is not automatically a more prudent investment than Treasury bonds simply because Bitcoin happened to skyrocket over a selected period. Crediting that kind of rigged comparison would punish fiduciaries for hedging risk in just the way ERISA contemplates.

For the same reasons, petitioners' approach would frustrate Congress' objectives in encouraging risk-mitigation in the first place. After the Great Recession, the equity markets might well have tumbled again instead of soaring. In that world, petitioners would have secured *higher* performance from Intel's risk-mitigation strategy. But if fiduciaries face liability whenever their funds underperform *any* other fund, they will converge on the same generic equity-heavy strategies. Plan participants who prefer conservative, risk-mitigating strategies would lose access to them. *See* Encore Fiduciary Br. at 23-24, *Parker-Hannifin*, No. 24-1030 (U.S. May 21, 2025). That result would eliminate the diversity of options that ERISA encourages.

Plan Costs, Availability, and Expertise. Another of ERISA's goals is to limit "litigation expenses." *Varity*, 516 U.S. at 497. This Court has also stressed the need for district courts to "weed[] out meritless" duty-of-prudence

claims at the motion-to-dismiss stage. *Dudenhoeffer*, 573 U.S. at 425. Petitioners' approach—under which bare allegations of costs that are "too high" or returns that are "too low" would state a claim—would undercut these aims.

Petitioners' approach would thus worsen an already rampant problem. From 2016 to 2022, "the number of excessive plan fee cases that settle[d] … increased six-fold." *Cunningham v. Cornell Univ.*, 604 U.S. 693, 711 (2025) (Alito, J., concurring) (citing Chubb, Excessive Litigation Over Excessive Plan Fees in 2023, at 2-3 (2023), https://tinyurl.com/2yp389u2). Many proceed into discovery. *See* Jacklyn Wille, *ERISA Class Actions Soar in 2026 as New Legal Theories Emerge*, Bloomberg L. (Apr. 13, 2026), https://tinyurl.com/3awxh2vb. As a result, defendants must pay millions in legal fees, as lawyers review and produce hundreds of thousands of documents, retain experts, and depose fiduciaries and other witnesses. In light of those costs, suits are often more "efficient to settle" even when the fiduciaries "are convinced that they would win if the litigation continued." *Cunningham*, 604 U.S. at 711 (Alito, J., concurring); *see* U.S. Br. at 22, *Parker-Hannifin*, No. 24-1030 (U.S. Dec. 9, 2025).

Permitting such claims to proceed past the pleading stage disserves plan participants themselves. ERISA administrators may "pass[] on" litigation costs to plan participants. *Cunningham*, 604 U.S. at 711 (Alito, J., concurring). For instance, ERISA authorizes plans to fund fiduciary liability insurance using plan assets. 29 U.S.C. § 1110(b). Those insurance premiums are adjusted based on litigation risk, and "[i]nsurers have already raised premiums because of the surge in cases under Section 1104." Encore Fiduciary Br. at 23, *Parker-Hannifin*, No. 24-1030 (May 21, 2025). To offset costs, plan sponsors may also choose "to reduce matching

contributions or decline to pay plan administrative costs." American Benefits Council Br. at 19-20, *Cunningham*, 604 U.S. 693 (No. 23-1007).

The specter of liability also threatens to hollow out the ranks of skilled fiduciaries—consisting here of Intel employees, members of Intel's Board, and an independent fiduciary (a Wharton professor). In safeguarding Americans' retirement savings, ERISA fiduciaries fulfill a quiet role on which the nation's workers rely. But the role comes with the prospect of personal liability for any breach of duty. 29 U.S.C. § 1109(a). If plan fiduciaries face liability (or extortionate settlements) simply for doing their jobs, then sponsors will struggle to attract and retain the talent the role demands.

And last of all, American employers might conclude that retirement plans have become simply too expensive to offer. As Congress understood when drafting the statute, "litigation expenses" can "discourage employers from offering welfare benefit plans in the first place." *Varity*, 516 U.S. at 497. A statute designed to encourage retirement plans should not be interpreted to provide reason to shutter them.

D. Petitioners Failed to Allege Any Meaningful Benchmarks

Petitioners (at 37-38) alternatively argue that their comparators *were* meaningfully similar to Intel's Funds. The Court did not grant review of that fact-bound question; the question presented asks whether the Ninth Circuit was right to require a similar comparator at all. In any event, the Ninth Circuit correctly rejected petitioners' contention.

1. To recap, the amended complaint sought an inference of imprudence in respondents' allocation of

assets to hedge funds and private equity holdings because of the Funds' allegedly higher resulting fees and relative resulting underperformance. Petitioners therefore needed to identify benchmarks that shared the Plans' "clearly disclosed … risk-mitigation objective" yet produced better returns at lower cost. Pet.App.13a. Petitioners failed to do so. They did not even compare the Funds to the Funds' own benchmarks, disclosed to plan participants and beneficiaries as representative performance targets. Pet.App.13a-14a.[3] Instead, petitioners sought to compare the Funds to passively managed "equity-heavy retail funds" (*e.g.*, from Vanguard), or to entire category averages (*e.g.*, Morningstar's Target Date Fund category). Pet.App.14a, 55a-56a. And the purported similarity stemmed predominantly from those comparators' labels as "target date funds," not their underlying strategies.

None of those comparators were meaningful benchmarks because passive indices and equity-heavy retail funds plainly have "'different aims, different risks, and different potential rewards'" than the expressly disclosed volatility- and risk-mitigation objectives of the Funds. Pet.App.14a (quoting *Davis*, 960 F.3d at 485); *see also In re Quest Diagnostics ERISA Litig.*, No. 24-2866, 2026 WL 1783204, at *4 (3d Cir. June 22, 2026) (Bibas, J.) (noting that passively managed and actively managed

[3] Petitioners (at 20-21) suggest that they did compare the GDF to the "MSCI World Index," which respondents identified as a relevant benchmark. J.A.629. In fact, petitioners explicitly disclaimed any comparison to MSCI World, deeming it "not a plausible benchmark." J.A.267. Instead, petitioners alleged that "a more appropriate benchmark index would be the Morningstar World Allocation TR," J.A.93-94, which the Ninth Circuit concluded was not meaningfully similar, Pet.App.14a.

funds "are not materially identical investments and are not fungible," as "they reflect two different investment strategies"). As a result, differences in performance between the proposed comparators and the Funds permit no plausible inference that such performance differences are attributable to imprudent selection of specific investments. It is just as plausible—indeed, more so—that different returns stemmed from the Funds' different objectives.

This same reasoning also justified affirming dismissal of the allegations that the Plans incurred unnecessary fees compared to passive comparators. As courts have routinely recognized, "the cheapest investment option is not necessarily the one a prudent fiduciary would select." *Albert v. Oshkosh Corp.*, 47 F.4th 570, 579 (7th Cir. 2022). Accordingly, "[a] court cannot reasonably draw an inference of imprudence simply from the allegation that a cost disparity exists; rather, the complaint must state facts to show the funds or services being compared are, indeed, comparable." *Matney v. Barrick Gold of N. Am.*, 80 F.4th 1136, 1149 (10th Cir. 2023). Petitioners never made such allegations. Their comparison to "off-the-shelf funds that did not seek to mitigate risk to the same degree as Intel's funds" was therefore insufficient to support an inference that the Funds' fees were imprudently excessive. Pet.App.15a.

2. The Ninth Circuit also correctly rejected the notion that petitioners did not need to plead a meaningful benchmark because respondents' "unusual" approach meant there were "*no* meaningful comparators for the fiduciaries' decision." Pet.App.15a. (emphasis in original).

The Ninth Circuit noted that petitioners could have "present[ed] a comparison to Intel's composite benchmarks or to available funds with similar risk-

mitigation strategies and objectives." Pet.App.13a-14a. Petitioners chose not to make those comparisons, presumably because they would have confirmed that the claims fail. Petitioners also "had access to detailed information about the Intel funds—including the identities of the hedge funds and private equity funds in which they invested." Pet.App.20a. Yet petitioners made "only general arguments about the riskiness and costliness of hedge funds and private equity funds without providing factual allegations sufficient to support the claim that the investments that were actually made were ill-suited to the Intel funds." Pet.App.20.

Petitioners' repeated assertions about the supposedly "outlier" nature of respondents' strategy of including hedge fund and private equity assets in the Funds do not fill the gap. Petitioners cite no authority requiring fiduciaries to follow the prevailing wisdom on asset allocation, and courts have consistently explained that assertions about what a "typical" fiduciary might have done "say little about the wisdom of [defendant's] investments, only that [defendant] may not have followed the crowd." *DeBruyne*, 920 F.2d at 465; *see Barchock v. CVS Health Corp.*, 886 F.3d 43, 52, 55 (1st Cir. 2018) (rejecting allegation that fiduciaries "departed radically" from standard allocations as "just cavils about deviation from industry standards"). The Ninth Circuit was likewise correct to affirm the dismissal of petitioners' conclusory, generalized allegations.

Nor is there any support for petitioners' apparent contention that a prudent fiduciary with comparable aims would not have made *any* allocation to hedge funds and private equity. To hear petitioners (at 1, 11, 17, 37) tell it, no ERISA fiduciary could prudently allocate even a dollar to these supposedly "illiquid, costly, and opaque" assets.

In reality, "[s]pecific investments or techniques are not per se prudent or imprudent." *See* Restatement (Third), *supra*, § 90 cmt. f. As the Ninth Circuit noted, ERISA *requires* that fiduciaries "diversify[] the investments of the plan so as to minimize the risk of large losses." 29 U.S.C. § 1104(a)(1)(C); *see also* 29 C.F.R. § 2550.404a-1(b)(1)(i)-(ii) (implementing regulations recognizing that risk can be managed through diversification).

For that reason, "the prudence of each investment is not assessed in isolation but, rather, as the investment relates to the portfolio as a whole." Pet.App.16a (citing *Pension Benefit Guar. Corp. ex rel. St. Vincent Cath. Med. Ctrs. Ret. Plan v. Morgan Stanley Inv. Mgmt.*, 712 F.3d 705, 717 (2d Cir. 2013)). And there is no reason why a prudent, diversified portfolio cannot include alternative assets like hedge funds or private equity, which are common in large institutional portfolios. *See supra* p. 13. Petitioners' "*per se* approach" to attacking hedge funds and private equity "is directly at odds with [the] case law and federal regulations interpreting ERISA's duty of prudence." *Tatum v. RJR Pension Inv. Comm.*, 761 F.3d 346, 360 (4th Cir. 2014); Pet.App.16a-17a.

At bottom, petitioners are not arguing that respondents chose an imprudent strategy to achieve a permissible aim; their real gripe is that respondents supposedly "gave up the long-term benefit of investing in equity," J.A.114, by making risk-mitigation an aim of the Funds in the first place. But as the Ninth Circuit noted, petitioners' preference for a different objective—many years after the bull market began—is not the basis for an imprudence claim. "[C]ourts have routinely rejected claims that an ERISA fiduciary can violate the duty of prudence by seeking to minimize risk." Pet.App.15a; *see*

Pizarro, 111 F.4th at 1181; *Ellis v. Fid. Mgmt. Tr. Co.*, 883 F.3d 1, 10 (1st Cir. 2018); *Barchock*, 886 F.3d at 49-50.

This case should not break new ground. Indeed, as the Ninth Circuit noted, "the complaint suggests that the fiduciaries' choices had their intended effects," with hedge funds underperforming the global stock market in "up" months but overperforming in "down" months. Pet.App.18a. Allegations that respondents were imprudent because the volatility- and risk-mitigation strategy they expressly disclosed *succeeded* are not even "consistent with [respondents'] liability," let alone sufficient to cross "the line between possibility and plausibility of entitlement to relief." *Iqbal*, 556 U.S. at 678 (cleaned up). To the contrary, that petitioners "criticize [respondents] for shying away from [equities] in the wake of the 2007-2008 market collapse well demonstrates that [petitioners'] standard of prudence relies on hindsight." *Ellis*, 883 F.3d at 10.

II. Petitioners' Arguments For Reversal Are Unpersuasive

A. A Meaningful-Benchmark Requirement Does Not Impose a Heightened Pleading Requirement

1. Petitioners (at 30-33, 41) attack the meaningful-benchmark requirement as imposing a heightened pleading standard that is improper under Rule 8. That assertion misunderstands the requirement. As explained above, the requirement "is simply a corollary of the basic plausibility requirement" as applied in the context of allegations predicated on underperformance, which necessarily require a meaningful comparator. *Braden v. Wal-Mart Stores, Inc.*, 588 F.3d 585, 597 (8th Cir. 2009). "An inference pressed by the plaintiff is not plausible if the facts he points to are precisely the result one would expect from lawful conduct in which the defendant is known to

have engaged." *Id.* So when a plaintiff wishes to recover for a breach of the duty of prudence because an investment allegedly "underperformed" or "cost too much," he must adequately allege that the performance and costs are *not* "the result one would expect" from the fiduciary's investment objective. That is accomplished by plausibly alleging that a meaningfully similar investment had better returns or lower costs.

In this respect, the meaningful-benchmark requirement mirrors how this Court has applied *Twombly* and *Iqbal*'s pleading standard in other cases where a plaintiff sought to plead liability through a chain of inferences. In *Twombly* itself, the Court held that a bare "allegation of parallel conduct … will not suffice" to allege an antitrust conspiracy. 550 U.S. at 556. Instead, if a plaintiff seeks to infer conspiracy from parallel conduct, courts must require factual allegations of additional circumstances—often described as "plus factors"—that tend to exclude independent action and thereby "place parallel conduct 'in a context that raises a suggestion of preceding agreement.'" *In re Musical Instruments & Equip. Antitrust Litig.*, 798 F.3d 1186, 1194 (9th Cir. 2015) (quoting *Twombly*, 550 U.S. at 557). That pleading rule requiring "further factual enhancement" does not "heighten[]" the pleading standard; it simply recognizes that some allegations inherently do not "state a claim to relief that is plausible on its face." *Twombly*, 550 U.S. at 557, 570. The same is true of the meaningful-benchmark requirement. *See supra* pp. 22-23.

2. In any event, petitioners are wrong that a rule that seems "categorical" is off limits in the pleading context. This Court has repeatedly drawn clear lines when evaluating allegations in complaints. Such holdings do not graft "requirement[s] of greater specificity" or

"particularity" onto pleading standards, Pet. Br. 33, 41; they merely recognize that certain kinds of allegations in certain kinds of cases yield no plausible inference of misconduct.

In *Hikma*, for example, the Court held that allegations of "mere omissions, inactions, or nonfeasance" are insufficient to state a claim for induced patent infringement. *Hikma*, 146 S. Ct. at 1402 (citation omitted). The Court instead required allegations of "*affirmative* 'statements or actions.'" *Id.* (emphasis in original). The Court reached that result even though "[w]ith a healthy stretch of the imagination, one might believe" based on the plaintiff's allegations that some third parties were induced to infringe. *Id.*

The same concept applies to ERISA. *Dudenhoeffer* emphasized that courts must apply *Twombly* and *Iqbal*, giving "careful judicial consideration of whether the complaint" plausibly suggests the fiduciary "has acted imprudently." *Dudenhoeffer*, 573 U.S. at 425. That review provides an "important mechanism for weeding out meritless claims"—for "divid[ing] the plausible sheep from the meritless goats." *Id.*

In fact, in *Dudenhoeffer* the Court laid down not one, but *two* "bright-line pleading rules," Pet. Br. 27, governing when allegations plausibly suggest a breach of the duty of prudence. First, "where a stock is publicly traded, allegations that a fiduciary should have recognized from publicly available information alone that the market was over- or undervaluing the stock *are implausible as a general rule*, at least in the absence of special circumstances." 573 U.S. at 426 (emphasis added). Second, "[t]o state a claim for breach of the duty of prudence on the basis of inside information, a plaintiff *must* plausibly allege 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 (emphasis added).

Petitioners' suggestion (at 31) that *Dudenhoeffer* makes pleading standards inappropriate in the ERISA context misreads the case. What *Dudenhoeffer* rejected was a *substantive* "presumption of prudence" favoring fiduciaries of certain types of plans. 573 U.S. at 418-19. The Court held that "the same standard of prudence applies to all ERISA fiduciaries." *Id.* The meaningful-benchmark rule is in complete accord. It does not change the substantive standard for prudent fiduciary processes around investment decisions. It simply helps courts fulfill their obligation at the motion-to-dismiss stage to "divide the plausible sheep from the meritless goats." *Id.* at 425.[4]

3. Petitioners' other cited cases (at 30-33, 35-36, 45) are inapposite.

Matrixx Initiatives v. Siracusano, 563 U.S. 27 (2011), rejected *one* pleading rule in favor of *another*. The defendant there sought a rule that a claim of securities fraud based on a drug company's failure to disclose an

---

[4] Petitioners are likewise wrong that *Dudenhoeffer* "credited—without requiring any comparator—a complaint's allegation that an investment option was 'overvalued' and therefore underperformed when it 'fell by 74%.'" Pet. Br. 35 (quoting *Dudenhoeffer*, 573 U.S. at 413-14). In the passage that petitioners rely on, the Court simply *described* the plaintiffs' allegation that when "the market crashed … Fifth Third's stock price fell by 74%." 573 U.S. at 413-14. As noted above, *supra* pp. 25-26, the Court went on to pour buckets of cold water on the plaintiffs' attempts to generate an inference of imprudence from their allegations about the value of the investments.

adverse-event report must also plead that the drug increases the risk of that adverse event to a statistically significant degree. 563 U.S. at 38-39. The Court rejected that rule because allegations short of statistical significance could in many cases establish the requisite inference. *Id.* at 40.

But *Matrixx* went on to announce a different categorical rule: Allegations that a drug company failed to disclose "reports of adverse events" are insufficient to create a plausible inference of securities fraud because "the mere existence of [such] reports … says nothing in and of itself about whether the drug is causing the adverse events." 563 U.S. at 43-44. Here too, a disparate outcome between investment funds says nothing in and of itself about whether an ERISA fund was mismanaged. "Something more is needed." *Id.* at 44.

Petitioners argue that *Tibble* did "not require[] comparison" to state a plausible claim that fiduciaries breached their duties by "fail[ing] to properly monitor investments and remove imprudent ones." Pet. Br. 35-36. In fact, *Tibble* supports a meaningful-benchmark requirement rather than undermining it. The *Tibble* plaintiffs claimed that it was imprudent to retain "six higher priced retail-class mutual funds as Plan investments when *materially identical* lower priced … funds were available." *Tibble*, 575 U.S. at 525-26 (emphasis added). That is the paradigmatic case of a meaningful benchmark: the exact same investment product at a different price point. Nothing in the opinion suggests the Court would have credited the *Tibble* plaintiffs' allegations if they had instead copied petitioners' strategy of comparing *materially different* investments.

Hughes does not help petitioners, either. Like *Tibble*, *Hughes* involved allegations based on a meaningful comparator: "neglecting to provide cheaper and otherwise-identical alternative investments." 595 U.S. at 176. Moreover, *Hughes* corrected an erroneous *substantive* analysis: The Seventh Circuit had used compliance with one "component of the duty of prudence" (offering diverse options) to "excuse" breaches of another component (monitoring those options). *Id.* The meaningful-benchmark requirement is fundamentally different. It does not excuse any breach. It simply requires that when plaintiffs rely on comparative performance to plead a breach, they provide a comparison that generates a plausible inference of liability.

Finally, the Court's statement in *Berk v. Choy*, 607 U.S. 187, 194 (2026), that courts should not "require more information" than what Rule 8 requires is of no help to petitioners because the meaningful-benchmark standard requires no more than Rule 8 (or Rule 12(b)(6)) demands. The Ninth Circuit correctly held that petitioners' complaint failed precisely because *its allegations* did not "possess enough heft to show that the pleader is entitled to relief." *Twombly*, 550 U.S. at 557 (cleaned up).

B. Petitioners' Overinclusiveness Concerns Are Unfounded

Petitioners (at 28, 31, 45-47) claim that a meaningful-comparator requirement is "overinclusive"—that it results in the dismissal of claims that plausibly allege imprudence. That argument again misunderstands the meaningful-benchmark standard and the Ninth Circuit's decision.

1. Petitioners (at 3, 9, 28, 38, 39, 42) repeatedly claim that the "Ninth Circuit defined" the requisite "meaningful

benchmark" to require a comparator "with 'similar objectives,' 'similar risks,' and similar 'potential rewards,'" and imply that the rule requires a veritable twin.

That characterization is inaccurate. What the Ninth Circuit said is that "Anderson's putative comparators were not truly comparable because they had 'different aims, different risks, and different potential rewards.'" Pet.App.14a (citation omitted). Although the analysis will typically require a "comparator with similar objectives," *id.* at 12a, the court did not hold that the aims, risks, and rewards of another fund must all be identical for it to provide a "sound basis for comparison." Pet.App.11a (citation omitted). Petitioners (at 38, 43, 47-49) are likewise wrong to suggest that the Ninth Circuit required identifying a comparator with the same asset allocation. The Ninth Circuit expressly disclaimed any requirement that a comparator pursue similar "allocation decisions" to be "meaningful." Pet.App.15a.

Petitioners (at 2, 6-9, 24-25) support their strawman reading of the Ninth Circuit's decision by pointing to Eighth Circuit precedent with which petitioners say the Ninth Circuit "aligned itself." But the Eighth Circuit's cases make clear that all that is needed is "a sound basis for comparison," repeatedly emphasizing that "there is no one-size-fits-all approach." *Davis*, 960 F.3d at 484; *see also Matousek*, 51 F.4th at 281 ("there is no one-size-fits-all approach"). To the contrary, "[p]lausibility depends on the 'totality of the specific allegations in each case.'" *Davis*, 960 F.3d at 484 (cleaned up) (quoting *Meiners*, 898 F.3d at 822); *accord Matousek*, 51 F.4th at 281.

Nor is there any merit to petitioners' warning that affirming the meaningful-benchmark requirement will send courts "down the road" of imposing additional threshold requirements for other aspects of

underperformance allegations—such as how large a performance gap must be or how long it must persist. Pet. Br. 50. That slippery-slope argument elides a basic distinction. The meaningful-benchmark requirement is not an arbitrary threshold layered onto the plausibility analysis; as explained, it is inherent in the very concept of *under*performance, as a fund cannot "underperform" in the abstract. By contrast, the magnitude and duration of any performance gap are matters of *degree* within an otherwise meaningful comparison. Those metrics bear on how much weight a court should give the allegations in the holistic plausibility analysis. The antecedent question of whether a plaintiff's proposed comparison is probative of imprudence *at all* is categorically different.

2. Petitioners fail to show that the meaningful-benchmark requirement screens out plausible claims grounded in allegations of underperformance.

Take petitioners' hypothetical (at 46) of a complaint alleging that a target-date fund "performs twice as poorly as the next-worst fund." The hypothetical depends on the unstated assumption that the challenged fund has done twice as poorly as the next-worst fund with a *comparable objective*. If that is adequately alleged, the difference in performance might raise a plausible inference of an imprudent investment process. But without that assumption, the difference in performance alone cannot state a plausible claim because there is an obvious alternative explanation—the funds had different aims.

Petitioners' own complaint acknowledges that TDFs can have differing "investment strategies, glide paths, and investment-related fees." J.A.67 (cleaned up). A more conservative fund—say, one weighted heavily to bonds over stocks—may deliver only half the performance of a more aggressive fund when the market booms. The

opposite may be true during a bear market. *See Pizarro*, 111 F.4th at 1180.

In either scenario, the mere existence of the disparity says nothing about the "administrator's real-time decision-making process," which is the focus of the duty of prudence. *Forman*, 40 F.4th at 448. The disparity shows only that "one investment performed well in hindsight," which cannot anchor a duty-of-prudence claim. *Id.*

Petitioners' hypothetical (at 47) of a suit alleging that "a bespoke" fund underperformed internal benchmarks runs headlong into the Ninth Circuit's opinion below. Petitioners suggest that the Ninth Circuit would affirm the dismissal of such a complaint. But the Ninth Circuit explained that petitioners might have alleged imprudence if "a comparison to Intel's composite benchmarks" showed underperformance. Pet.App.13a-14a. Petitioners could not make that showing and never made that comparison. J.A.84-86, 284. "Instead [petitioners] rel[ied] on the Intel TDFs' performance against the Morningstar 'peer group category,' which Intel *did not* designate as a benchmark," Pet.App.59a (emphasis added), and which the Ninth Circuit held was not a meaningful comparator, *see* Pet.App.14a. The same goes for petitioners' comparison of the GDF to the Morningstar World Allocation Category—an average of a group of funds that invest in global stocks and bonds, which Intel *did not* designate as a benchmark, and which the Ninth Circuit and district court deemed not meaningfully similar. *See* Pet.App.14a, 61a-63a; *see also supra* pp. 30-31. Regardless, even if the Morningstar World Allocation Category were a meaningful comparator, petitioners' *own* allegations show that the GDF outperformed 80% of the largest funds in that category. Pet.App.62a, J.A.97.

Petitioners (at 28, 31, 45-46) ultimately retreat to generalities, claiming that all "rules" are "necessarily overinclusive." But even were petitioners correct that there are *some* hypothetical scenarios where a meaningful-benchmark requirement could prove overinclusive, that does not mean the concept is illegitimate. "[R]eduction of vague congressional commands into rules that are less than a perfect fit is not a frustration of legislative intent because that is what courts have traditionally done, and hence what Congress anticipates when it legislates." Antonin Scalia, *The Rule of Law as a Law of Rules*, 56 U. Chi. L. Rev. 1175, 1183 (1989). Here too, Congress imposed an open-ended common-law duty of prudence that courts must evaluate across various fact patterns. The meaningful-benchmark requirement gives courts a critical tool to perform that task at the threshold of cases predicated on alleged underperformance.

C. The Meaningful-Benchmark Requirement Does Not Ask Courts to "Ignore" Allegations

Petitioners (at 28, 30-31, 39, 42-43, 51) repeatedly fault the meaningful-benchmark rule for supposedly preventing courts from assessing "allegations as a whole" and causing courts to abandon a "context-specific" analysis. In making this argument, petitioners are seeking to rewrite the decision below and their own cert petition.

The meaningful-benchmark requirement does not require courts to ignore or disregard any allegations. It is a framework for engaging in "careful, context-sensitive scrutiny of a complaint's allegations," *Dudenhoeffer*, 573 U.S. at 425, and figuring out whether underperformance allegations support a plausible inference of an imprudent process. The central problem for petitioners is not that

the Ninth Circuit ignored any allegations, but that it considered the complaint in methodical detail and found the allegations wanting—including the allegations about the purported evils of hedge funds and private equity. Pet.App.13a-18a. The number of individual allegations petitioners made doesn't change the analysis. Piling allegations that do not suggest imprudence on top of other insufficient allegations does not generate a plausible inference of imprudence.

Moreover, petitioners are wrong that the meaningful-benchmark standard leaves ERISA plaintiffs unable to plead imprudence without a comparator. The meaningful-benchmark standard is targeted to situations where a "plaintiff *simply* … allege[s] that the fiduciaries could have obtained better results … by choosing different investments." Pet.App.10a (emphasis added). The Ninth Circuit was clear: "We do not hold that a plaintiff must *always* identify a comparator when relying on circumstantial allegations of a breach of the duty of prudence." Pet.App.14a; *see also id.* at 31a (Berzon, J., concurring) ("[A]ny 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."). But where, as here, an ERISA plaintiff brings "claims *predicated on* fund underperformance," Pet. i (emphasis added), that plaintiff must provide a sound basis for comparison. Petitioners cannot use their improper *per se* attacks on hedge funds and private equity to run away from the question they chose to present to this Court.[5]

---

[5] Petitioners (at 45) note that the Ninth Circuit used the words "in part" when stating 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

D. Petitioners' Policy Arguments Are Wrong

Petitioners (at 31, 38-39, 48-50) protest that the Ninth Circuit demanded a nearly "impossible" showing under an "unworkable" rule. It did not.

1. *The Meaningful-Benchmark Requirement Is Far From Insurmountable*

a. Petitioners (at 48) posit that plaintiffs will find it "difficult if not impossible to identify a 'meaningful benchmark.'" The experience of the lower courts proves otherwise. Courts have applied the meaningful-benchmark requirement for years. BIO 13-14. The sky has not fallen on plaintiffs. ERISA lawsuits and settlements have become *more* common, not less. *See* Chubb, ERISA Class Action Trends in 2025 (2025), https://tinyurl.com/u9z6mnfb; *see also Cunningham*, 604 U.S. at 711 (Alito, J., concurring) (recognizing the same trend for excessive-fee litigation).

Indeed, courts applying the meaningful-benchmark standard routinely find it satisfied. One court credited five benchmarks that shared the common "potential reward of maximizing investors' account balances to generate sufficient income throughout retirement," the common aim of "balanc[ing] total return and stability over time," and common levels of "risk." *McGeathy v. Reinalt-Thomas Corp.*, 2026 WL 617343, at *3 (D. Ariz. Mar. 5,

---

performance to funds or investments that are meaningfully similar." Pet.App.14a-15a. But the Ninth Circuit said "in part" simply because petitioners' complaint included other allegations too, such as their claim that hedge funds and private equity investments are *per se* inappropriate. As explained, those allegations were terminally flawed for reasons that had nothing to do with the persuasiveness of petitioners' performance allegations and that do not relate to the question presented. *See supra* pp. 32-33.

2026). Another court credited comparators that shared "the same investment strategies and contain[ed] underlying assets indexed to the same indices." *Baird v. BlackRock Institutional Tr. Co., N.A.*, 403 F. Supp. 3d 765, 780 (N.D. Cal. 2019) (citation omitted). And yet another court credited benchmarks because they were "the very benchmarks that Defendants themselves selected for comparison." *Becker v. Wells Fargo & Co.*, 2021 WL 1909632, at *4-5 (D. Minn. May 12, 2021).

As these and other cases show, the meaningful-benchmark requirement does not close the courthouse door to plausible claims.

b. Petitioners (at 46-49) are equally wrong that plaintiffs will be forced to make comparisons to "novel," "outlier" investments "that may themselves be imprudent."

The standard requires a "meaningfully similar" comparator, not one with identical investments. Pet.App.15a. Here, for instance, the Ninth Circuit expressly disclaimed any requirement to show similar "allocation decisions," such as investing in hedge funds or private equity to the same degree as Intel's funds. Pet.App.15a. The court instead faulted petitioners for pointing to comparators that "pursued different objectives" than the risk-mitigation strategy of the Funds. Pet.App.13a-14a. There was nothing novel about that strategy, and no reason why petitioners could not have attempted a meaningful comparison to another fund with a risk-mitigation objective. Instead, petitioners chose to rely on comparators that they conceded had "different investment strategies." *See* D. Ct. Dkt. 122 at 9. The task was not impossible; petitioners just chose not to tackle it.

The Ninth Circuit's reasoning easily applies to truly novel investment strategies. If a fiduciary invested in nascent crypto assets in the hopes of obtaining a huge payoff, *cf.* Pet. Br. 46, plaintiffs might benchmark against another fund that sought similarly aggressive returns using other investments. Conversely, a fiduciary who seeks a safe haven in bespoke, gold-based ETFs might be benchmarked against a fund that invested primarily in Treasury bonds. In both scenarios, a comparison might be meaningful if the comparator funds shared a common aim, even if they used different methods to achieve them. But where fiduciaries offered a fund because "it was conservative, advertised it as conservative, and benchmarked it against a conservative metric … relying on comparisons to other, more aggressive benchmarks" is inappropriate. *Pizarro*, 111 F.4th at 1181.

Petitioners also overlook that plaintiffs need not rely on underperformance allegations at all. Both the Ninth Circuit and Judge Berzon emphasized the "myriad" other routes plaintiffs can follow to plead imprudence. Pet.App.11a, 26a (citation omitted). Plaintiffs could "alleg[e] facts that would directly show that the fiduciaries employed unsound methods in making their investment decisions." Pet.App.11a. That could mean, for example, alleging that fiduciaries did not meet to discuss investment strategy, did not review relevant data, did not monitor their investments, or other process defects. *See, e.g.*, *Stegemann v. Gannett Co.*, 970 F.3d 465, 476 (4th Cir. 2020).

Alternatively, plaintiffs could rely on "circumstantial factual allegations" that invite an inference of unsound processes. Pet.App.11a (quoting *St. Vincent*, 712 F.3d at 718). For instance, plaintiffs could allege that a fiduciary imprudently failed to diversify the fund by over-allocating

"the plan's assets" to a "single form of security." Pet.App.29a (Berzon, J., concurring) (citing *California Ironworkers Field Pension Tr. v. Loomis Sayles & Co.*, 259 F.3d 1036, 1045 (9th Cir. 2001)). Petitioners made similar allegations here, asserting that Intel over-allocated the Funds toward "hedge funds and private equity." Pet.App.16a. The Ninth Circuit found those allegations insufficient for reasons distinct from the meaningful-benchmark standard. Pet.App.18a. But in other cases—say, a fiduciary who "allocated a significant portion of the plan's assets to a new type of security backed entirely by lottery tickets," Pet.App.27a—such allegations could well suffice to state a plausible claim even without a comparison.

c. Petitioners also claim to see tension between the meaningful-benchmark standard and the common law, which once forbade investing "in new and untried enterprises." Pet. Br. 48 (citation omitted). That tension is illusory. Again, the meaningful-benchmark standard doesn't require a comparator with identical investments; a fund that contains a "new" kind of investment could meaningfully be compared to a more traditional fund with similar aims or objectives. Plus, as petitioners concede, the common law and ERISA have since rejected that any investments—"new" or otherwise—can be *per se* imprudent. Pet. Br. 29-30.

d. Petitioners (at 48) are also incorrect that plaintiffs lack enough information about the features of their plans to identify meaningful benchmarks. As the Ninth Circuit observed in rejecting that argument, "ERISA requires plan administrators to make extensive disclosures to participants, including a summary plan description and an annual report with audited financial statements." Pet.App.19a (citing 29 U.S.C. §§ 1022, 1023). Fiduciaries

in particular, must disclose "a schedule of all assets held for investment purposes." 29 U.S.C. § 1023(b)(3)(C). And fiduciaries must inform participants of a "benchmark[]"—a "comparable" "broad-based securities market index over the 1-, 5-, and 10-calendar year periods." 29 C.F.R. § 2550.404a-5(d)(1)(iii). These "extensive … reporting, disclosure, and recordkeeping requirements," *Gobeille v. Liberty Mut. Ins. Co.*, 577 U.S. 312, 321 (2016), written "in a manner calculated to be understood by the average plan participant," 29 U.S.C. § 1022(a)(1), give participants ample information to identify a comparable plan.

In this case, those disclosure requirements did their job. Respondents "told participants that [their] new strategy was aimed at decreasing volatility and reducing the risk of large losses during a market downturn." Pet.App.7a. Respondents explained that because of that strategy, "the funds would not compare favorably with equity-heavy funds during bull markets." Pet.App.7a. And contrary to petitioners' repeated assertions (at *e.g.*, 48) about the supposedly "opaque" nature of the Funds, respondents "identified the hedge funds and private equity funds in which [the Funds] invested," Pet.App.18a, 20a. Respondents also pointed participants to "customized benchmarks, made up of a composite of the underlying benchmarks for each asset class included in the Intel funds." Pet.App.13a (cleaned up). With all this information, petitioners were "well positioned to find appropriate comparators." Pet.App.20a.

2. *Petitioners' Concerns About Workability Are Unfounded*

Petitioners (at 49) suggest the meaningful-benchmark standard creates confusion over when a comparison creates a plausible inference of imprudence. In fact, the standard dispels confusion.

Requiring a meaningful benchmark provides claims of relative underperformance with scaffolding. It requires courts to ask whether a comparison controls for enough differences between two funds that it discounts "obvious alternative explanations" for their gap in performance. *Twombly*, 550 U.S. at 567; *see Iqbal*, 556 U.S. at 682. And courts answer that question by taking full account of a fund's features—including its goals, timelines, and tolerance for risk. Pet.App.14a. That analysis gives courts and parties far more guidance than the free-form, know-it-when-you-see-it inquiry that petitioners appear to favor.

True enough, the standard yields no fixed formula for when a benchmark is meaningful. *See* Pet.App.14a-15a. But that is a feature, not a bug. Because funds may differ in countless ways, the standard sensibly refrains from hard-and-fast rules about which comparisons suffice and when a fund's relative underperformance triggers a plausible inference of imprudence. Petitioners' contention that the meaningful-benchmark standard provides courts *too much* wiggle room is hard to square with their demand (at 31) for an inquiry that eschews "bright-line" rules.

Regardless, nothing supports petitioners' contention that the standard is unworkable in practice. If lower courts were struggling, then one would have expected petitioners to highlight a chorus of cases seeking guidance. Petitioners do not. One would likewise have expected the government—itself a frequent ERISA plaintiff, *see* 29 U.S.C. § 1032(a)(2)—to urge this Court to jettison the standard. The government instead urges retaining it. U.S. Br. at 10-12, *Parker-Hannifin*, No. 24-1030 (U.S. Dec. 9, 2025).

If anything, petitioners' concerns about workability apply most forcefully to their own approach. *Supra*

pp. 39-44. In lieu of a set standard for evaluating claims predicated on fund underperformance—meaningful-benchmark or otherwise—petitioners would propose no standard at all. Plaintiffs could allege any meaningless comparisons they want, between funds as vastly different as they want, and courts could simply choose whether to infer imprudence. Neither ERISA nor Rule 8 supports that result, and this Court should reject it.

CONCLUSION

The judgment of the Ninth Circuit should be affirmed.

Respectfully submitted,

MYRON D. RUMELD
PROSKAUER ROSE LLP
Eleven Times Square
New York, NY 10036
(212) 969-3000

LISA S. BLATT
Counsel of Record
DANIEL F. KATZ
DAVID S. KURTZER-ELLENBOGEN
CHARLES L. MCCLOUD
KEES D. THOMPSON
ROHIT P. ASIRVATHAM
JONATHAN M. ARTAL
ARZU SINGH
WILLIAMS & CONNOLLY LLP
680 Maine Avenue, S.W.
Washington, DC 20024
(202) 434-5000
lblatt@wc.com

JULY 2, 2026