**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

## REPLY BRIEF FOR PETITIONERS

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## INTRODUCTION

The parties agree on many things. On the one hand, they agree that ERISA's duty of prudence focuses on process, not outcomes. They also agree that a fiduciary does not violate this duty just because an investment turns out worse than hoped. On the other hand, the parties agree that plaintiffs may make allegations supporting an inference that the process was imprudent, including allegations about an investment's performance, and that the strength of this inference depends on the context. Further, the parties agree that ERISA complaints are evaluated under the ordinary pleading rules, not a heightened standard.

Where the parties part ways is on whether pleading a "meaningful benchmark" is required for complaints that are based in part on investment performance allegations. The Intel fiduciaries and federal government defend this requirement as an application of the ordinary pleading rules. But that cannot logically be so. *Twombly* and *Iqbal* require courts to assess *all* non-conclusory allegations *together* in determining if a complaint plausibly states a claim. The meaningful-benchmark rule, by contrast, precludes that assessment. If performance allegations do not satisfy the rule's criteria, they are not considered in determining plausibility—even if they are non-conclusory. The rule therefore cannot be consistent with the ordinary pleading standards.

That is all that is needed for this Court to reject it. Neither the Intel fiduciaries nor the government give any reason why this Court should create a new requirement on top of *Twombly/Iqbal*. Nothing in ERISA's text or this Court's cases supports such a requirement. And any version of a meaningful-benchmark rule is a project doomed to fail: The more rigid the rule, the more overinclusive it is. Conversely, the more flexible the rule, the more confusing and pointless it is. This Court should reject the meaningful-benchmark rule in favor of the ordinary pleading standards.

## ARGUMENT

### I. The meaningful-benchmark requirement is fundamentally different than the "*Twombly/Iqbal* plausibility analysis"—not an application of it.

The Intel fiduciaries agree (at 34) that there is no heightened pleading standard under ERISA, and that the ordinary pleading rules under Rule 8 govern. They also agree (at 43) that imprudence is a contextual inquiry. And they do not deny that, under *Twombly* and *Iqbal*, a court must review all the non-conclusory allegations together—rather than individual allegations in isolation—to assess whether the complaint states plausible claims.

The fiduciaries' defense of the meaningful-benchmark requirement, then, reduces to the proposition that the rule is simply an application of the "*Twombly/Iqbal* plausibility analysis," and nothing more. Resp. Br. 4. The government (at 10) defends the requirement on the same grounds: that it "is an application of ordinary pleading rules."[1]

Yet the insurmountable hurdle for both the fiduciaries and the government is that the meaningful-benchmark rule precludes the very inquiry that *Twombly* and *Iqbal* require. As the decision below illustrates, the rule does not permit a court to review *all* the complaint's non-

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[1] Unless otherwise noted, all internal quotation marks, citations, and alterations have been omitted from quotations throughout this brief.

conclusory allegations *together* when assessing plausibility. For that reason alone, it should be rejected.

### A. Performance-related allegations are not "conclusory" just because they fail to satisfy the Ninth Circuit's definition of a "meaningful benchmark."

Under the ordinary pleading rules, a court "begin[s]" by identifying allegations that are "no more than conclusions" of law—for example, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements." *Ashcroft v. Iqbal*, 556 U.S. 662, 678–79 (2009). These allegations, and *only* these allegations, may be set aside because they are "not entitled to the assumption of truth." *Id.* at 679; *see Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555–57 (2007).

Neither the Intel fiduciaries nor the government claim that performance-related allegations as a category are conclusory and thus should be disregarded under step one of *Twombly*/*Iqbal*. To the contrary, the government concedes (at 24) that "courts may accept as true the allegation that the employer's fund underperformed another fund." And the same goes for all sorts of potential performance-related allegations. Allegations of how a fund performed over time, or how other funds (or the market more broadly) performed, are neither legal conclusions nor threadbare recitals.

The complaint in this case provides an example. Among other things, it contains detailed allegations explaining how Intel's funds underperformed the very benchmarks that the Intel fiduciaries themselves identified as comparators. *See, e.g.*, JA68, JA93–95. These allegations, which include tables showing how the funds performed relative to the fiduciaries' handpicked benchmarks over various periods of time, *see, e.g.*, JA84–

89, 96–98, are purely factual—not legal conclusions dressed up as facts. Nor are they remotely threadbare. They therefore may not be disregarded at step one.

The fiduciaries do not really argue otherwise. They contend only that a bare allegation that a fund "underperform[ed]" would be conclusory under *Twombly* and *Iqbal*, and thus should not be credited as true. Resp. Br. 24. The government takes a similar tack, claiming that a "naked assertion" that two funds are "comparable" to each other would be conclusory. U.S. Amicus Br. 24. But even if this were so, it would not mean that, as a rule, *all* performance-related allegations are conclusory unless they meet the meaningful-benchmark requirement.

Consider two types of allegations. The first alleges that "Fund A is comparable to, and underperformed, another fund (Fund B)" but contains no additional factual content. The second alleges that "Fund A and Fund B are both target-date funds of the same vintage" and that "Fund A performed twice as poorly as Fund B over the past decade." The first allegation—that Fund A and Fund B are "comparable" and that Fund A "underperformed" Fund B—might fairly be labeled a legal conclusion that need not be taken as true. But the second allegation—that the two funds are both target-date funds of the same vintage and that Fund A performed twice as poorly for a decade—is not conclusory and must be taken as true. Yet that would not be enough to satisfy the meaningful-benchmark rule.

Because the rule sets aside even non-conclusory allegations, it cannot be understood as an application of step one of *Twombly*/*Iqbal.*

### B. All non-conclusory performance-related allegations must be considered alongside all other well-pleaded allegations in assessing plausibility, yet the meaningful-benchmark rule examines them "in isolation."

Nor can the meaningful-benchmark rule be understood as an application of step two of *Twombly/Iqbal*. At this step, a court must accept the "well-pleaded factual allegations," "assume their veracity," and "determine whether they plausibly give rise to an entitlement of relief." *Iqbal*, 556 U.S. at 679. And because this inquiry "depends on the entirety of the complaint," all non-conclusory factual allegations "must be considered collectively." *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 325 (2007); *Hughes v. Northwestern Univ.*, 595 U.S. 170, 177 (2022) (plausibility at step two requires an assessment of "the allegations as a whole").

The meaningful-benchmark requirement does not comply with this second step. It divides a complaint's allegations into two categories: (1) performance-related allegations and (2) everything else. It then refuses to consider the allegations in each category together for plausibility purposes—even if well-pleaded—unless the complaint identifies a meaningful benchmark that outperformed the challenged investments. If the complaint does not do so, the court must exclude even the non-conclusory performance-related allegations and consider only the remaining allegations for plausibility.

**1.** Citing nothing, the Intel fiduciaries and the Solicitor General assert that the meaningful-benchmark rule is consistent with *Twombly/Iqbal* because performance-related allegations cannot "bolster other factual allegations in a way that renders them …

plausible" without a meaningful benchmark. U.S. Amicus Br. 24–25; *see also* Resp. Br. 44 (arguing, without authority, that "[p]iling allegations that do not suggest imprudence on top of other insufficient allegations does not generate a plausible inference of imprudence"). The argument goes like this: If the other factual allegations are enough for plausibility on their own, performance-related allegations will be "irrelevant." U.S. Amicus Br. 24. But if not, a meaningful benchmark will be needed lest the whole become "greater than the sum of its parts." U.S. Amicus Br. 24–25.

This does not follow. It is often the case that no allegation by itself is enough to create a plausible inference of illegality. But that does not mean that the allegations as a whole fail. Allegations that are insufficient in isolation can become sufficient in combination. The sum, in other words, can very much be greater than the parts.

That is why this Court has said in antitrust cases that "[t]he character and effect of a conspiracy are not to be judged by dismembering it and viewing its separate parts, but only by looking at it as a whole." *Cont'l Ore Co. v. Union Carbide & Carbon Corp.*, 370 U.S. 690, 699 (1962). It is why the Court has said in securities cases that "the court's job is not to scrutinize each allegation in isolation but to assess all the allegations holistically." *Tellabs*, 551 U.S. at 326. And it is why the Court has said in ERISA cases that courts must evaluate "the allegations as a whole." *Hughes*, 595 U.S. at 177. Failing to analyze allegations "against the backdrop of other allegations in the complaint" can lead to errors. *Nat'l Rifle Ass'n of Am. v. Vullo*, 602 U.S. 175, 195 (2024); *see also id.* at 199 (Gorsuch, J., concurring) ("[T]he Second Circuit's decision to break up its analysis into discrete parts and take the complaint's allegations in isolation appears only to have contributed to its mistaken conclusion" that the complaint failed to state a claim).

A hypothetical from our opening brief (at 46) makes the point. A complaint alleges that a fiduciary (1) selected a target-date fund that has performed twice as poorly as any other target-date fund on the market for the past twenty years, and (2) has made this the default selection that whole time. These allegations would seem to give rise to a plausible inference of imprudence (for failure to monitor, if nothing else). But what if the complaint instead alleged that the fiduciary selected the fund not as the default fund but simply as one fund among many that are available to participants, and then removed it after a year? The inference of imprudence would not seem nearly as strong in that scenario.

Yet, in both scenarios, the performance-related allegations are the same. Both complaints allege that the fund has been the single worst-performing target-date fund for twenty years and has performed twice as poorly as any other target-date fund over that time. And in both scenarios, the non-performance-related allegations by themselves are not enough to give rise to a plausible theory of imprudence. (Maintaining a default investment for twenty years is not itself imprudent.) It is only the *combination* of performance- and non-performance-related allegations that makes the difference. That is the very inquiry that *Twombly*/*Iqbal* requires, and that the meaningful-benchmark rule precludes.

**2.** Shifting gears, the Intel fiduciaries and the government also claim that the meaningful-benchmark requirement is necessary to rule out an obvious alternative explanation that different characteristics account for differences in performance. Resp. Br. 23; *see* *also* U.S. Amicus Br. 16 (requiring investments to "share enough characteristics to negate obvious alternative explanations for the gap in performance").

But here, again, the process of ruling out an obvious alternative explanation to determine plausibility—which occurs at step two of the analysis—must be based on "the allegations as a whole." *Nat'l Rifle Ass'n*, 602 U.S. at 195 (refusing to accept an "obvious alternative explanation" that fails to take into account "the allegations as a whole"). The question is "whether *all* of the facts alleged, taken collectively, give rise to a [plausible] inference of [liability], not whether any individual allegation, scrutinized in isolation, meets that standard." *Tellabs*, 551 U.S. at 323.

*Iqbal* itself makes this clear. There, the Court considered "bare assertions" that "amount[ed] to nothing more than a formulaic recitation" of a required element. 556 U.S. at 680–81. The Court disregarded these allegations, not because they were implausible, but because they were conclusory. *Id.* at 681. Only "next," when evaluating whether the remaining well-pleaded allegations plausibly suggested entitlement to relief, did the Court consider "more likely explanations." *Id.* at 681–82.

That makes sense. A court "cannot simply credit" a defendant's assertion of an obvious, alternative explanation. *Nat'l Rifle Ass'n*, 602 U.S. at 195. But without "the backdrop of other allegations," *id.*, the meaningful-benchmark rule leaves a court with no other option.

Nor is the requirement to view the allegations as a whole mere formalism. Here, for example, Intel's fiduciaries assert that the obvious alternative explanation for their funds' underperformance is the pursuit of a different goal—namely, "decreasing volatility and reducing the risk of large losses during market downturns" after the 2008 financial crisis. Resp. Br. 2, 8. But the assumption that hedge funds are less volatile than the equity market is, according to the complaint, incorrect. JA166, 171. Instead, well-known biases in the reporting of their returns "mask[s] volatility" and can hide even "extreme swings in valuations over short periods of time." JA171. The complaint continues, "[m]any hedge funds do not provide substantial risk reduction or risk diversification for pension plan assets because they are correlated to the equity market." JA139–40; *see also* JA174–75 (same during the 2008 financial crisis). Accepted as true (as they must be), these allegations—which don't fall within the subset of performance-related allegations—refute the fiduciaries' alternative explanation that the underperformance allegations are implausible.[2]

**3.** Finally, the Intel fiduciaries try to cast their rule in decidedly narrower terms. They suggest that the "meaningful-benchmark standard" is only "targeted to situations" in which a plaintiff's theory of breach is

[2] Even if the inquiry were artificially limited to the performance-related allegations, the complaint specifically rebuts the fiduciaries' alternative underperformance explanation. For instance, it provides a "risk-adjusted return comparison" for Intel's TDFs—expressly designed to account for the "purported[]" goal of minimizing risk. JA92–93. As even the government acknowledges, "[i]solating the asset-allocation strategy while holding risk level and other variables constant" through "[s]tandard investment-evaluation concepts like risk profile and expected returns" can "make[] the comparison meaningful." U.S. Amicus Br. 25–26. The Intel fiduciaries simply ignore this, and the Ninth Circuit outright rejected it. Pet.App. 18a.

"simply … that the fiduciaries could have obtained better results by choosing different investments." Resp. Br. 44.

Of course, that's not what the petitioners in *this* case alleged. Their claim challenges the decision-making process that led the fiduciaries to adopt, and then maintain, an unprecedented investment strategy that allocated billions of dollars in plan assets to poorly performing and costly investments. *See, e.g.*, JA14–15. To support that claim, the petitioners included hundreds of factual allegations, along with two expert reports, setting out in detail why imprudence could be inferred from a combination of factual allegations—many of which had nothing to do with how the investments performed. *See, e.g.*, JA108–16 (market data), 117–25 (outlier strategy), 133–52 (risks of "significant investment" in these vehicles).[3]

Nor is it how the Ninth Circuit understood the meaningful-benchmark rule. The lower court was quite clear that the rule kicks in anytime the complaint relies on underperformance allegations, even "in part." Pet.App. 14a–15a. That's why it assessed the complaint's performance-related allegations in isolation and asked whether the complaint identified any better-performing fund that had similar "aims," "risks," and "potential rewards" to the challenged funds. Pet.App. 11a–14a. Finding none, the court discarded the complaint's

[3] It is in this sense that the petitioners' claim of imprudence here is "predicated on fund underperformance." *Contra* Resp. Br. 44. The complaint relies on performance-related allegations, in combination with other non-performance-related allegations, to establish a plausible inference of imprudence. But the claim is in no way *solely* based on the performance-related allegations contained in the complaint.

performance-related allegations in their entirety. Pet.App. 14a.

## II. The Intel fiduciaries identify no legitimate justification for devising a novel "antecedent" meaningful-benchmark requirement on top of *Twombly/Iqbal*.

The Intel fiduciaries offer no compelling reason for this Court to break from *Twombly/Iqbal* and the plain meaning of Rule 8 to create a new "antecedent" meaningful-benchmark rule for performance-related allegations. Resp. Br. 41; *see also* Chamber of Com. Amicus Br. 18 (characterizing it as a "threshold requirement for alleged underperformance").

### A. None of the precedents that the Intel fiduciaries invoke supports adding a meaningful-benchmark requirement.

As described above and in our opening brief, this Court has consistently—across a broad range of contexts—rejected lower court attempts to take a complaint's allegations in isolation to determine whether they give rise to a plausible inference of liability. The Intel fiduciaries nonetheless suggest that such an approach here is consistent with this Court's precedents. That effort fails.

The Intel fiduciaries start by asserting that this Court endorsed such a rule in *Hikma Pharmaceuticals USA Inc. v. Amarin Pharma, Inc.*, 146 S. Ct. 1391 (2026). As the fiduciaries see it (at 36), that decision permits an isolated assessment of plausibility for "certain kinds of allegations in certain kinds of cases." It does not. There, the Court "appl[ied] the[] familiar pleading standards" set out in *Twombly* and *Iqbal*. *Hikma*, 146 S. Ct. at 1399 (noting that "[o]ur well-established federal pleading standards are not up for debate"). Under those standards, the Court considered whether the complaint's factual allegations—"whether *viewed together* or separately"—could state a claim for induced infringement. *Id.* at 1401 (emphasis added). Doing *just* the latter, as the fiduciaries urge, is impermissible. *See Nat'l Rifle Ass'n*, 602 U.S. at 194–95 (courts may not limit the plausibility analysis to specific "allegations in isolation").

The Intel fiduciaries' reliance on *Fifth Third Bancorp v. Dudenhoeffer*, 573 U.S. 409 (2014), fares no better. Resp. Br. 36. There, too, the Court emphasized that bright-line pleading rules have no place in performing the task of "divid[ing] the plausible sheep from the meritless goats." *Dudenhoeffer*, 573 U.S. at 425. Instead, the Court reiterated, what's required is a "careful, context-sensitive scrutiny of a complaint's allegations." *Id.* The Intel fiduciaries point to *Dudenhoeffer*'s recognition of a "general rule" that, standing alone, certain factual allegations will not be capable of plausibly stating a claim for imprudence. Resp. Br. 36. But that is commonplace. Individual factual allegations will often be insufficient, on their own, to state a plausible claim for relief. *See, e.g.*, *Smith v. CommonSpirit Health*, 37 F.4th 1160, 1167 (6th Cir. 2022) (explaining that an allegation that a fund underperformed "may offer a building block for a claim of imprudence" but might not "suffice[] alone").

This is precisely why it is crucial that courts carefully evaluate *all* the allegations in a complaint *together*. *See Hughes*, 595 U.S. at 177; *Mator v. Wesco Distrib., Inc.*, 102 F.4th 172, 190 (3d Cir. 2024) (refusing to apply the meaningful-benchmark requirement because a complaint "should not be parsed piece by piece to determine whether each allegation, in isolation, is plausible").

### B. Nothing in ERISA's text or purposes supports adding a threshold meaningful-benchmark requirement.

The Intel fiduciaries also suggest (at 24–26) that ERISA justifies adopting the meaningful-benchmark requirement. Like the Ninth Circuit, Pet.App. 12a, they contend that section 1104(a)(1)(B) operates at the investment-by-investment level and requires "an allegation that fees or results were abnormal when measured against *comparable* investments." Resp. Br. 24; *see also* U.S. Amicus Br. 22–23.

That is not what the statute says. *See* 29 U.S.C. § 1104(a)(1)(B) (referring to "the conduct of an enterprise of a like character and with like aims"). The terms "character" and "aims" in section 1104(a)(1)(B) plainly modify the "enterprise." So, it is the prudent person's "enterprise"—and not any individual investment or fund—that must be of "a like character and with like aims." *See Lockhart v. United States*, 577 U.S. 347, 351 (2016) ("Qualifying words or phrases modify the words or phrases immediately preceding them.").

And this Court in *Dudenhoeffer* conclusively resolved what it means for a prudent person to be engaged in a similar enterprise. There, this Court held that "an enterprise of a like character and with like aims" refers to the "exclusive purpose … pursued by all ERISA fiduciaries"—"providing [financial] benefits to participants and their beneficiaries while defraying reasonable expenses of administering the plan." 573 U.S. at 420. In other words, ERISA requires fiduciaries to act like a prudent person seeking to maximize benefits while defraying costs.

The Intel fiduciaries simply ignore this. They say *Dudenhoeffer* "held only that courts should not take account of idiosyncratic '*nonpecuniary* goals' in judging the prudence of investment decisions." Resp. Br. 25 (citing 573 U.S. at 420). But so what if it did? Our point is that *Dudenhoeffer* confirmed that the statute's plain language provides no license for deviating from the ordinary pleading standards: Section 1104(a)(1)(B) does not address specific investment-by-investment decisions and therefore does not raise the bar on the type of allegations that may otherwise be considered when assessing whether the complaint plausibly alleges a violation of the duty of prudence. On that, the Intel fiduciaries have no response.

Moving past the text, the Intel fiduciaries appeal (at 26) to "ERISA's broader design." They worry (at 27–29) that, if plaintiffs can point to "*any* other fund" that performed better, then fiduciaries will all select the same generic equity-heavy strategies, pass litigation costs on to participants, struggle to recruit talented fiduciaries, and potentially stop offering retirement plans altogether. The fiduciaries' amici echo this fear as well. *See* Chamber of Com. Amicus Br. 28–33; Nat'l Assn. of Mfrs. Amicus Br. 18–20.

This cascade of concerns is fanciful. *See Cunningham v. Cornell Univ.*, 604 U.S. 693, 707–08 (2025) (rejecting similar arguments about "an avalanche of meritless litigation"). At no point have we suggested that simply pointing to "*any* other fund" will be capable of defeating a motion to dismiss. *Contra* Resp. Br. 27. Just the opposite. As we've explained above, if a claim were really based *exclusively* on that single allegation, devoid of any additional factual content, it would fail to generate a plausible inference of imprudence. But there is no need to fashion a new bright-line rule just to ensure that such a marginal hypothetical case doesn't proceed to discovery. The holistic inquiry would make short work of it.[4]

Regardless, the fiduciaries' and their amici's avalanche-of-meritless-litigation trope is simply not credible. Many circuits do not apply any version of the meaningful-benchmark rule (which, in any case, is less than a decade old). *See* Opening Br. 6–9. Yet there has been no wave of meritless cases surviving the pleading stage and forcing fiduciaries into discovery based on performance-related allegations. Not surprisingly, this Court has consistently rejected such claims in ERISA cases. *See, e.g.*, *Cunningham*, 604 U.S. at 708 (explaining that "district courts can use existing tools at their disposal to screen out meritless claims before discovery"). It should do so here as well.

### C. The Intel fiduciaries provide no reason to think that the *Twombly/Iqbal* analysis is inadequate in this context, and their attempts to make the Ninth Circuit's meaningful-benchmark requirement more palatable only underscore its problems.

Our opening brief explained (at 45–51) that, aside from its methodological errors, the meaningful-benchmark rule also suffers from a host of practical problems: It risks producing erroneous results; it introduces complexity and confusion; and it is

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[4] It is ironic, to say the least, that even as the Intel fiduciaries defend the meaningful-benchmark rule as simply an application of *Twombly/Iqbal*, they also warn that this rule—and not the ordinary *Twombly/Iqbal* analysis—is somehow the only thing standing between lower courts and a world of "chaos" where it is "trivially easy for plaintiffs to defeat a motion to dismiss." Resp. Br. 15, 17.

unnecessary to address any legitimate concerns. The Intel fiduciaries have no persuasive response.

***The rule is overinclusive.*** As with many categorical rules, designating a particular kind of benchmark "as always determinative" of the context-sensitive imprudence inquiry is overinclusive. *Matrixx Initiatives, Inc. v. Siracusano*, 563 U.S. 27, 39 (2011). Its blunt attempt to screen out certain kinds of implausible comparative allegations means that it will also unavoidably discard allegations that are relevant and important to the plausibility analysis. *Cf. Basic Inc. v. Levinson*, 485 U.S. 224, 232, 236 (1988) (rejecting a bright-line pleading rule in favor of a contextual inquiry into the "total mix" of information, and observing that "[a]ny approach that designates a single fact or occurrence as always determinative of an inherently fact-specific finding … must necessarily be overinclusive or underinclusive").

The fiduciaries attempt to downplay the significance of the rule, suggesting (at 4) that it would only require disregarding performance-related allegations that are "meaningless." That is no answer at all. If, by "meaningless," the fiduciaries mean any performance-related allegation that doesn't satisfy the particular meaningful-benchmark criteria, then it will necessarily bar consideration of allegations that are often the most relevant indicators of imprudence—like, for instance, that the fiduciaries' default target-date fund has been the worst performing target-date fund on the market for two decades running.

Taking up this hypothetical, the fiduciaries claim that such an allegation can properly be disregarded unless it includes the "unstated assumption" that the challenged fund and the next-worst fund share a "comparable objective." Resp. Br. 41 (emphasis omitted). But "[u]nder trust law, a trustee has a continuing duty to monitor trust investments and remove imprudent ones" and "must systematically consider all the investments of the trust at regular intervals to ensure that they are appropriate." *Tibble v. Edison Int'l*, 575 U.S. 523, 529 (2015). It is simply not credible to suggest that an allegation that a fiduciary for years defaulted participants into the worst-performing investment option in its category says *nothing* relevant about that duty.

***The rule is unworkable.*** The Intel fiduciaries admit (at 50) that their "standard yields no fixed formula for when a benchmark is meaningful." That is a recipe for confusion: If the fiduciaries cannot even clearly articulate their rule, what are courts to do? But whatever their "standard" means, it most certainly does *not* mean that the performance-related allegations just need to be meaningful enough to allow the complaint *as a whole* to give rise to a plausible inference of imprudence. That is not what the Ninth Circuit said, and it is not what it did.

As one example, take the requirement that, to be meaningful, the funds must share the same asset allocation. The fiduciaries repeatedly claim (at 4–5, 17, 46, 48) that the meaningful-benchmark requirement does not require a comparator to have the same asset allocation as the challenged fund. But that's not how the Ninth Circuit saw it. Under the standard it embraced, the *only* acceptable benchmark would have been a "customized" benchmark that included "the same asset allocation" as the challenged funds. Pet.App. 13a. And it rejected other proposed alternatives in part because it considered their equity-heavy asset allocations too disparate. Pet.App. 14a. Other courts have done much the same thing. *See, e.g.*, *Davis v. Washington Univ. in St. Louis*, 960 F.3d

478, 485–86 (8th Cir. 2020) (rejecting a potential comparator because it had a "lower percentage" of one asset class).

Or consider benchmarks identified by the fiduciaries themselves. Under the meaningful-benchmark rule adopted here, even though the *fiduciaries themselves* identified and relied on specific benchmarks, many would not qualify as "meaningful." For example, fact sheets commissioned by the Intel fiduciaries explicitly identified the MSCI World Index as a "Benchmark" for the GDF. JA629. Without addressing any specific comparator—let alone this benchmark the fiduciaries themselves identified—the Ninth Circuit characterized all of the petitioners' "putative comparators" as "not truly comparable." Pet.App.14a.[5]

Nor is it clear how courts should assess whether funds' objectives are sufficiently similar to clear the meaningful-benchmark hurdle that the rule erects. At what level of generality should objectives be defined? *See* Resp. Br. 25–26 (recognizing that, under *Dudenhoeffer*, "the general enterprise is the same for all ERISA fiduciaries (providing benefits while defraying expenses)"). How similar must the objectives be? How should a court determine the objectives if not clearly spelled out? What if there are multiple objectives? The Intel fiduciaries offer this Court no guidance.

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[5] As the fiduciaries note (at 30 n.3), the petitioners' experts disagreed that the MSCI World Index was the best benchmark for the GDF. They explained why the Morningstar World Allocation Category "is a better and more appropriate benchmark," instead. JA267. But regardless, the Ninth Circuit rejected both—applying the meaningful-benchmark rule to screen out benchmarks that the fiduciaries and the petitioners' experts identified.

It is perhaps not surprising, then, that courts have often expressed hesitation at resolving these fact-specific questions on a motion to dismiss. As one district court explained, the "more granular inquiries into the suitability of comparators" are ill-suited to the motion to dismiss stage. *Gonzalez v. Northwell Health, Inc.*, 2024 WL 6935277, at *10 (E.D.N.Y. Mar. 26, 2024). That is why "[d]isagree[ments] as to what the correct benchmark is" for a specific fund is a question "more appropriately determined on summary judgment." *Henderson v. Emory Univ.*, 252 F. Supp. 3d 1344, 1352 (N.D. Ga. 2017).

***The rule is unnecessary.*** Nor would it make sense for this Court to install such a requirement. Even the most defensible version of the requirement would serve no legitimate purpose that is not already served by the standard pleading rules. Adhering to those rules without the added complication of a meaningful-benchmark requirement will not cause "chaos" or invite "Monday-morning quarterbacking." *Contra* Resp. Br. 4, 17. It will not "make it trivially easy for plaintiffs to defeat a motion to dismiss." *Contra* Resp. Br. 15. It would simply require district courts to do what they do every day: assess the allegations in a complaint as a whole to determine whether they give rise to a plausible claim for relief.

## III. Applying ERISA's "context-specific" approach, all the allegations in the complaint, taken together, plausibly state a claim.

Although not necessary to decide the question presented, assessing the "allegations as a whole" shows why the allegations in the petitioners' complaint are more than enough to plausibly state a claim. *Hughes*, 595 U.S. at 177.

The complaint alleges that the fiduciaries acted imprudently when they embarked on (and then maintained) a strategy to allocate excessive funds in their default investment options to hedge funds and private equity. JA13 (alleging default options), 183 (alleging a "defective process" in both "selecting and monitoring the asset allocations").

The complaint alleges that the fiduciaries' allocation strategy was unprecedented. Specifically, the decision to "allocat[e] significant portions" of their assets to these vehicles was a "drastic[] depart[ure] from prevailing standards of professional asset managers." JA14; *see also* JA117–25. "Comparable target date funds and balanced funds did not allocate their assets anywhere close to the Intel Funds' allocations." JA15.

The complaint details what made these vehicles riskier than traditional investments. JA133–52. Hedge funds, for example, are subject to strict leverage limits, often require an initial "lock-up" period in which funds must be committed, charge high fees, "lack transparency by design," and are subject to few regulatory controls. JA134–44.

That is not to say—as the fiduciaries claim (at 32)—that "no ERISA fiduciary could prudently allocate even a dollar to these supposedly 'illiquid, costly, and opaque' assets." Rather, as the complaint repeatedly stresses, the problem was in the "significant," "outsize[d]," and "disproportionate" allocations to these vehicles. *See, e.g.*, JA13. Even federal regulators, who recognized that an investment lineup could include "a private equity component," warned against over-investment (the SEC, for example, suggested a ceiling of 15% on illiquid investments). *See* JA986–88 & n.8.

Market data demonstrated the folly of this allocation strategy. *See generally* JA167–84. "Hedge funds failed to do much better than a [standard] 60/40 portfolio in 2008, and have done a lot worse since, including in the period March 2009 to 2011." JA177. For these reasons, investment professionals characterized the Intel fiduciaries' strategy as an expensive "experiment," or worse, "institutional gambling with employees' assets." JA59.

And, indeed, the performance of their strategy bore out what the market data predicted. The complaint alleges that, "[i]n the past six years," the accounts holding non-traditional assets "performed significantly less well" than the accounts in the same fund that held traditional assets. JA163–66. The non-traditional assets acted as a drag when the traditional assets performed well (reducing a net gain of $128 million by $100 million in 2011). JA164. And they exacerbated the losses when the traditional assets performed poorly (accounting for $93 million of a total loss of $106 million in 2015). JA164.

Looking externally, the Intel fiduciaries' funds underperformed benchmarks identified by the fiduciaries themselves, as well as those identified as comparable by experts. For the TDFs, this included peer funds of the same vintage, JA68 & n.11, which the experts agreed were "reasonable and appropriate" benchmarks in these circumstances, JA69. The TDFs underperformed these metrics, even on a risk-adjusted basis. JA82–93. And for the GDF, this included the MSCI World Index (which *the fiduciaries* explicitly described as a "[b]enchmark," JA93–94; *see, e.g.*, JA629), as well as the Morningstar World Allocation TR (which the experts explained was "more appropriate," JA94). For example, "[f]or the 10-year period ending June, 2014, the GDF underperformed over 90% of its peers in the US Fund World Allocation Morningstar Category." JA98.

Ultimately, the Ninth Circuit's analysis missed the bigger picture for its singular focus on a particular type of benchmark. Taken as true and viewed holistically, the comparative allegations detailed here add to the mix of allegations that plausibly supported an inference of an imprudent process. All together, these allegations sufficed to plausibly state a claim under ERISA.

## CONCLUSION

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

Respectfully submitted,

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