No. 25-976

# In the Supreme Court of the United States

ROBERT CARLISLE, PETITIONER

*v.*

BOARD OF TRUSTEES OF THE AMERICAN FEDERATION OF THE NEW YORK STATE TEAMSTERS CONFERENCE PENSION AND RETIREMENT FUND, ET AL.

**On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit**

## BRIEF IN OPPOSITION


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## QUESTION PRESENTED

Whether the court of appeals correctly affirmed the district court's determination that the allegations in petitioner's complaint fail to state a plausible claim for a breach of ERISA's duty of prudence.

## CORPORATE DISCLOSURE STATEMENT

Respondents the Board of Trustees of the New York State Teamsters Conference Pension and Retirement Fund, John Bulgaro, Brian K. Hammond, Paul A. Marwitz, George F. Harrigan, Mark D. May, Michael S. Scalzo, Sr., Robert Schaeffer, Mark Gladfelter, Samuel D. Pilger, Daniel W. Schmidt, and Tom J. Ventura are not corporations, do not have a parent corporation, and do not issue securities to the public, and no publicly held company owns 10% or more of their stock.

Respondent Meketa Investment Group, Inc. has no parent corporation, and no publicly held company owns 10% or more of its stock.

Respondent Horizon Actuarial Services, LLC has no parent corporation or stock, and no publicly held company owns 10% or more of its equity.

## RELATED PROCEEDINGS

United States District Court (N.D.N.Y.):

*Carlisle* v. *Bd. of Trs. of the Am. Federation of the N.Y. State Teamsters Conference Pension and Retirement Fund*, No. 21-cv-455 (Feb. 7, 2025)

United States Court of Appeals (2d Cir.):

*Carlisle* v. *Bd. of Trs. of the Am. Federation of the N.Y. State Teamsters Conference Pension and Retirement Fund*, No. 21-cv-455 (Nov. 21, 2025)

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## INTRODUCTION

The Second Circuit unanimously held in a non-precedential ruling that petitioner's allegations fail to state a plausible claim for a breach of the fiduciary duty of prudence under the Employee Retirement Income Security Act (ERISA). That fact-bound ruling is correct and does not warrant further review.

Petitioner argues that the decision implicates a circuit split that this Court agreed to resolve in *Anderson* v. *Intel Corp. Investment Policy Committee*, cert. granted, No. 25-498 (Jan. 16, 2026). Petitioner is incorrect. The question in *Anderson* is whether imprudence claims predicated on the underperformance of specific investment funds in a pension plan require allegations of a "meaningful benchmark." That question is not presented here. The Second Circuit's decision does not address, much less depend on, pleading requirements for claims premised on specific underperforming funds. Nor does it mention any "meaningful benchmark" requirement or cite cases applying such a requirement. The decision simply does not implicate the question in *Anderson*—which helps explain petitioner's unusual argument that the decision conflicts with *both sides* of the *Anderson* circuit split.

In reality, the Second Circuit applied well-settled principles that this Court and others uniformly follow. It properly determined that the complaint's allegations fail to state a claim under those principles. There is no reason to review that fact-bound determination. Indeed, this case would be an especially bad candidate for certiorari because of threshold jurisdictional issues. The petition should be denied.

## STATEMENT

### A. Legal background

1. ERISA was enacted "to provide comprehensive regulation for private pension plans." *Connolly* v. *PBGC*, 475 U.S. 211, 214 (1986). The statute prescribes "standards for the funding, management, and benefit provisions of these plans," and "also established a system of pension benefit insurance." *Ibid.*

Nothing in ERISA "requires employers to establish employee benefits plans." *Lockheed Corp.* v. *Spink*, 517 U.S. 882, 887 (1996). So ERISA aims for a "'careful balancing' between ensuring fair and prompt enforcement of rights under a plan and the encouragement of the creation of such plans." *Conkright* v. *Frommert*, 559 U.S. 506, 517 (2010) (citation omitted). The statute is calibrated to avoid being "so complex that administrative costs, or litigation expenses, unduly discourage employers from offering [ERISA] plans in the first place." *Ibid.* (citation omitted).

ERISA plans are administered by fiduciaries. See 29 U.S.C. 1102(a)(1). Those fiduciaries have various duties. Relevant here is the duty of prudence: fiduciaries must act "with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims." 29 U.S.C. 1104(a)(1)(B).

The statute also creates a detailed enforcement scheme. Fiduciaries are "personally liable" for losses that result from a breach of their fiduciary duties. 29 U.S.C. 1109(a). And plan participants (among others) have a cause of action to seek such relief and appropriate equitable relief. 29 U.S.C. 1132(a)(2)-(3).

2. There are two main types of ERISA pension plans. First, defined contribution plans (like the familiar 401(k) plan) provide benefits that depend on the amount of contributions made to employees' individual accounts within the plan, factoring in the subsequent performance of the investments the employees choose for the assets in their accounts. See *LaRue* v. *DeWolff, Boberg & Assocs., Inc.*, 552 U.S. 248, 250 n.1 (2008); 29 U.S.C. 1002(34). In contrast, defined benefit plans promise "a fixed level of retirement income, which is typically based on the employee's years of service and compensation," like a lifelong pension. *LaRue*, 552 U.S. at 250 n.1; see 29 U.S.C. 1002(35). Defined benefit plans "consist[] of a general pool of assets rather than individual dedicated accounts." *Hughes Aircraft Co.* v. *Jacobson*, 525 U.S. 432, 439 (1999); see 29 U.S.C. 1002(35).

Some defined benefit plans are multiemployer plans. See 29 U.S.C. 1002(37). In such a plan, contributions by multiple participating employers "are pooled in a general fund available to pay any benefit obligation of the plan," pursuant to collective bargaining agreements between the employers and one or more labor unions. *Concrete Pipe & Prods. of Cal., Inc.* v. *Constr. Laborers Pension Tr. for S. Cal.*, 508 U.S. 602, 605 (1993).

Many multiemployer pension plans have faced significant funding challenges, which have prompted a series of ERISA amendments. In 2006, Congress created new mechanisms to restore underfunded plans at risk of not meeting their pension obligations.

If a plan is classified as being in "endangered" status, it must adopt a "funding improvement plan" to reduce the funding deficiency. 29 U.S.C. 1085(c). If the plan is in "critical" status, it must adopt a "rehabilitation plan" to improve underfunding through increased contributions and, potentially, reductions in future benefit accruals. 29 U.S.C. 1085(e)(1), (3)(A).

In 2014, Congress created a new category for plans in "critical and declining status." 29 U.S.C. 1085(b)(6). Such plans have authority to suspend benefits by amending their plan terms, subject to approval by the U.S. Department of the Treasury in consultation with the Pension Benefit Guaranty Corporation (PBGC)[1] and the U.S. Department of Labor. 29 U.S.C. 1085(e)(9)(A), (G). "The plan shall not be liable for any benefit payments not made as a result of a suspension of benefits" under this statutory provision. 29 U.S.C. 1085(e)(9)(B)(iii). Instead, the statute permits Administrative Procedure Act actions to challenge the government's approval of the benefit suspension. 29 U.S.C. 1085(e)(9)(I)(ii)(I)-(II). The statute further provides that "[a] participant or beneficiary affected by a benefit suspension under this paragraph shall not have a cause of action under this subchapter." 29 U.S.C. 1085(e)(9)(I)(iii).

To further address these funding problems, President Biden signed the American Rescue Plan Act of 2021. Among other things, this law created a special

[1] "When a defined-benefit plan fails and is unable to pay benefits to retirees, the federal Pension Benefit Guaranty Corporation is required by law to pay the vested pension benefits of the retirees, often in full." *Thole* v. *U.S. Bank N.A.*, 590 U.S. 538, 545 (2020); see 29 U.S.C. 1302.

financial assistance program for troubled multiemployer plans. 29 U.S.C. 1432. Plans that had implemented a suspension of benefits under 29 U.S.C. 1085(e)(9) were eligible for this financial assistance and given priority. 29 U.S.C. 1432(b)(1)(B), (d)(1)(C). A plan that receives financial assistance under this new law must reinstate previously suspended benefits, and the amount of financial assistance is calculated to enable the plan to pay those benefits through 2051. 29 U.S.C. 1432(j)(1), (k). Such a plan is barred from applying for a new suspension of benefits. 29 U.S.C. 1432(m)(6).

### B. Factual and procedural background

1. Petitioner is a participant in the New York State Teamsters Conference Pension and Retirement Fund.[2] The Fund is a multiemployer pension plan providing benefits to thousands of active and retired employees represented by the Teamsters union. Pet. App. 119a (Compl. ¶¶ 23-25). Respondents are current and former members of the Fund's board of trustees, the Fund's investment adviser (Meketa), and the Fund's enrolled actuary (Horizon). *Id.* at 116a-118a (Compl. ¶¶ 19-22).

For decades, Teamster-represented domestic trucking companies made up a significant percentage of the Fund's contributing employers. Starting in the 1980s, however, and coinciding with deregulation of the trucking industry and a general decline in union-

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[2] The case caption incorrectly refers to the Fund as the American Federation of the New York State Teamsters Conference Pension and Retirement Fund.

ized employment, the Fund started to see a steady decline in its number of contributing employers. C.A. App. 231, 339-340. The decrease in contributing employers and active participants continued over the following decades, even as the number of retirees grew. *Id.* at 231-232; see also *History—Frequently Asked Questions*, N.Y. State Teamsters Conf. Pension & Ret. Fund, https://www.nystpensionfund.org/history-faqs (last visited Apr. 20, 2026).

Given such circumstances, the trustees recognized that the long-term viability of the Fund would depend in large part on investment returns. See Pet. App. 111a-112a (Compl. ¶ 10). Long before this lawsuit, the trustees retained respondent Meketa in a fiduciary capacity to serve as investment consultant to strengthen the Fund's returns. *Id.* at 117a-118a (Compl. ¶ 21). With Meketa's advice, the trustees began to implement more diversified investment allocations, including an increased emphasis on private markets and other alternative investments. C.A. App. 233, 333-334; see also Pet. App. 130a (Compl. ¶ 48).

Along with these allocation changes, the trustees adopted an investment return objective of 8.5%. Pet. App. 111a-112a, 122a (Compl. ¶¶ 10-11, 31). Horizon increased its assumed actuarial rate of return for the Fund from 8% to 8.5% in 2007. *Id.* at 112a (Compl. ¶ 11). Petitioner makes no allegation that the Fund's portfolio failed to achieve this target. Nor could he. The Fund averaged an 11.96% investment return over the five years leading up to the proposed class period. C.A. App. 231.

But the trustees' investment strategy could not overcome the Fund's changing demographics. By

2008, amid a global financial crisis, the Fund's shrinking contribution base led Horizon to certify that the Fund was in "endangered" status. See Pet. App. 124a (Compl. ¶ 33); C.A. App. 231, 331. As ERISA requires, the trustees adopted a funding improvement plan based on contribution rate increases and reduced future benefit accruals. Pet. App. 124a (Compl. ¶ 34). Two years later, funding levels had dropped further, and Horizon certified that the Fund was in "critical status." *Id.* at 125a (Compl. ¶ 36). The trustees then adopted the required rehabilitation plan, which called for additional contribution rate increases and greater reductions and eliminated certain adjustable benefits. *Id.* at 125a-126a (Compl. ¶ 37).

Despite those measures, the Fund's funding level continued to decline. Pet. App. 123a-124a (Compl. ¶ 32). By 2016, Horizon had certified that the Fund was in "critical and declining status." *Id.* at 128a (Compl. ¶ 43). At that point, the trustees sought government approval to reduce accrued benefits to avoid insolvency. *Id.* at 128a-129a (Compl. ¶ 44). The Treasury Department approved the Board's revised application on September 13, 2017. *Id.* at 129a (Compl. ¶ 45).

2. The Fund's statutorily authorized reduction in benefits prompted this litigation. In October 2020, petitioner filed a putative class action against the trustees, Meketa, and Horizon. Petitioner alleged that the trustees violated ERISA's fiduciary duties by adopting an allegedly high-risk, high-cost asset allocation to pursue an allegedly excessive 8.5% rate of investment return. Pet. App. 111a-112a (Compl. ¶ 10). Petitioner also asserted that Horizon breached

fiduciary duties in adopting an 8.5% actuarial return assumption. *Id.* at 112a (Compl. ¶ 11). And he accused Meketa of having a conflict of interest when it recommended purportedly excessive allocations of Fund assets to certain emerging markets equities and private equity investments. *Id.* at 113a (Compl. ¶ 12). Respondents moved to dismiss the complaint.

While respondents' motions were pending, the trustees secured $1.3 billion in special financial assistance for the Fund under the American Rescue Plan Act. C.A. App. 2171-2172; see Press Release, Pension Ben. Guar. Corp., *PBGC Approves Supplemented SFA Application for NYS Teamsters Conference Plan* (Apr. 6, 2023), https://www.pbgc.gov/news/press/pr23-017. The Fund used this financial assistance to restore monthly benefit payments and issue makeup, lump-sum payments for participants whose payments were reduced, including petitioner. Pet. App. 33a-34a; C.A. App. 2171-2172.

The district court (Sannes, C.J.) dismissed the complaint for failure to state a claim. Pet. App. 14a-104a. The court first addressed jurisdiction, holding that petitioner's claims were not moot and did not fail for lack of Article III standing. *Id.* at 35a-53a. But the claims did fail on the merits. The complaint did not adequately allege that Horizon was an ERISA fiduciary. *Id.* at 64a-72a. Nor did it adequately allege that either the trustees or Meketa breached a fiduciary duty. *Id.* at 74a-104a.

3. The Second Circuit (Calabresi, Chin, Lee, JJ.) affirmed in a unanimous, unpublished decision. Pet. App. 1a-13a.

The court of appeals also started with jurisdiction. Like the district court, it held that petitioner had Article III standing when he filed the complaint because his benefits had been reduced. Pet. App. 5a-6a. The court next held that the claims were not moot, even though petitioner's benefits had since been restored, because the "collateral source" rule purportedly prohibits courts from considering benefits from third parties (like the federal government here) in determining the extent of a plaintiff's recovery. *Id.* at 6a-7a.

On the merits, the court of appeals affirmed the dismissal. It agreed with the district court that Horizon, the enrolled actuary, was not plausibly an ERISA fiduciary. Pet. App. 8a-9a. And it also agreed that the complaint failed to allege a breach of fiduciary duty by the trustees or Meketa. *Id.* at 9a-13a.

Petitioner did not seek panel or en banc rehearing.

## REASONS FOR DENYING THE PETITION

The Court should deny the petition for three main reasons. First, the decision below does not implicate the question presented in *Anderson* v. *Intel Corp. Investment Policy Committee*, cert. granted, No. 25-498 (Jan. 16, 2026), or any other circuit split. Second, the decision is correct. It articulated sound legal principles, which petitioner does not challenge, and properly applied them to the specific allegations in the complaint. Third, this case is an unsuitable vehicle for further review. Although the courts below held that they had jurisdiction, that conclusion would need to be revisited before this Court could reach the merits. And because the Fund is a multiemployer pension plan, not the much more common defined contribution plan, there is little reason for this Court to reach the merits. The distinctive facts alleged in this case do not frequently arise, so this Court's decision would have quite limited significance.

### A. The Second Circuit's decision does not raise the question in *Anderson* and does not implicate a circuit split.

1. Petitioner argues that his case raises "the same questions" as *Anderson*. In that case, the Court granted certiorari to address the following question: "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.'" Pet. at i, *Anderson*, *supra* (No. 25-498). The petition here, however, phrases its question differently. That makes sense. Contrary to petitioner's suggestion, the Second Circuit's decision does not actually raise the question that the Court will decide in *Anderson*.

To start, the Second Circuit did not purport to identify pleading requirements "for claims predicated on fund underperformance." Pet. at i, *Anderson*, *supra* (No. 25-498). At no point does the Second Circuit's decision address the "performance" or "underperformance" of pension plan investments. Those words do not appear. Instead, the decision addresses petitioner's core theory of imprudence, which focused on how the Fund allocated its investments across different asset classes. As the Second Circuit recounts, petitioner criticizes an alleged decision by the trustees and Meketa to "allocate relatively high amounts of Plan assets to private market investments." Pet. App. 10a. Indeed, from the complaint's opening paragraphs, petitioner focused on the overall asset allocation, not individual underperforming investments. According to petitioner, the trustees "imprudently deployed and maintained the Plan assets in an extraordinary high risk, high cost asset allocation to chase a grossly excessive and unreasonable 8.5% 'actuarial return target.'" *Id.* at 111a (Compl. ¶ 10). And Meketa allegedly had a conflict of interest "in providing investment advice to the Trustees concerning the Plan's extraordinary high risk, high cost asset allocation." *Id.* at 113a (Compl. ¶ 12). As petitioner himself stressed below, asset allocation is a different investment decision than selecting the "specific investment vehicles" for the portfolio. C.A. Reply 6.

Nor does the Second Circuit decision purport to "require[] alleging a 'meaningful benchmark.'" Pet. at i, *Anderson*, *supra* (No. 25-498). Once again, that language never appears in the Second Circuit's decision. It uses neither the word "meaningful" nor the word "benchmark."

The Second Circuit's decision rested on different principles. The court acknowledged its obligation to construe the complaint liberally, accepting all factual allegations as true and drawing all reasonable inferences in petitioner's favor. Pet. App. 7a. Still, circuit precedent required it to "judge a fiduciary's actions based upon information available to the fiduciary at the time of each investment decision and not from the vantage point of hindsight." *Id.* at 9a (quoting *In re Citigroup ERISA Litig.*, 662 F.3d 128, 140 (2d Cir.

2011)). The Second Circuit also acknowledged this Court's observation that "the circumstances facing an ERISA fiduciary" sometimes "implicate difficult tradeoffs," requiring courts deciding a motion to dismiss to "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).

These principles doomed the complaint's theory of imprudence. Petitioner failed to "adequately allege that the Plan's investment strategy constituted such an extreme outlier from 'peer' multiemployer plans that it was imprudent." Pet. App. 10a. Contrary to petitioner's portrayal (Pet. 29), the court did not dispute that the multiemployer plans that petitioner identified as bases for comparison were the Fund's "peers" and provided a sound basis for comparison. While respondents did advance such arguments in some parts of their briefing, the Second Circuit focused on a distinct problem with petitioner's theory: his complaint's failure to show that the Fund's asset allocation was so different from that of other multiemployer plans as to raise a plausible inference of imprudence given the range of judgments that reasonable fiduciaries may make in a given set of circumstances. See Pet. App. 10a.

The Second Circuit thought that the complaint's "best" theory for inferring imprudence was "the possibility that Meketa was a 'conflicted' fiduciary because it served a dual role as both the Plan's nondiscretionary investment advisor and its private markets investments manager." Pet. App. 10a-11a. But the court recognized that this theory ultimately failed, too. The complaint's factual "allegations do not suffice to establish the plausibility of a conflict." *Id.* at 11a.

A review of the Second Circuit's opinion thus establishes that the complaint here failed not because of a "meaningful benchmark" requirement for evaluating the performance of investment funds, which is the issue in *Anderson*, but because of the weaknesses of petitioner's specific allegations of an imprudent asset allocation and conflict of interest.

2. With the Second Circuit's rationale in view, it becomes easy to see why the decision does not conflict with decisions of any other courts of appeals. Petitioners cite three decisions from other circuits, none of which is even cited in the decision below. None presents a conflict.

Petitioner first highlights *Johnson* v. *Parker-Hannifin Corp.*, 122 F.4th 205 (6th Cir. 2024), petition for cert. pending, No. 24-1030 (filed Mar. 26, 2025). That case, unlike this one, involved a defined contribution pension plan. In such plans, fiduciaries provide a menu of investment options, and participants choose from among those options when investing the assets within their individual plan accounts. *Id.* at 209. The *Parker-Hannifin* plaintiffs alleged that fiduciaries imprudently allowed participants to invest in a specific suite of target date funds, the Northern Trust Focus Funds, which from their inception allegedly "underperformed the S&P target date fund benchmark." *Id.* at 210. The Sixth Circuit majority held that those underperformance allegations supported an inference that the fiduciaries imprudently retained the Focus Funds in the plan's investment lineup. The majority further ruled that although a "meaningful benchmark is not required to plead a facially plausible claim of imprudence," the S&P target date fund benchmark qualified as a meaningful benchmark for the Focus Funds. *Id.* at 216.

That holding is irrelevant here. Again, petitioner does not challenge the prudence of particular investment funds, like the target date funds in *Parker-Hannifin*. The Fund here is a defined benefit pension plan, not a defined contribution plan, so there is no menu of investment options for participants to choose from. Petitioner instead challenges the Fund's overall investment allocation. That challenge failed not because a meaningful benchmark was required or because he did not identify one. As discussed already, the Second Circuit did not impose a meaningful benchmark requirement and did not cite any cases that imposed such a requirement. On the contrary, the court accepted that petitioner had identified "'peer' multiemployer plans" but found that he failed to show that the Fund's allocation was "such an extreme outlier" that an inference of imprudence was plausible. Pet. App. 10a. Petitioner disagrees with that conclusion, see Pet. 29, but he fails to show any conflict between it and the cases he cites.

On the contrary, the Sixth Circuit endorses the principles on which the Second Circuit relied. See Pet. App. 9a. In the Sixth Circuit, too, fiduciaries' decisions are not judged in hindsight, so "[i]mprudence claims * * * must be viewed from a 'foresight-over-hindsight perspective.'" *Parker-Hannifin*, 122 F.4th at 216 (quoting *Smith* v. *CommonSpirit Health*, 37 F.4th 1160, 1167 (6th Cir. 2022)). And "courts must give due regard to the range of reasonable judgments a fiduciary may make based on her experience and expertise." *CommonSpirit*, 37 F.4th at 1165 (quoting *Hughes*, 595 U.S. at 177).

The next alleged conflict is with *Anderson* v. *Intel Corp. Investment Policy Committee*, 137 F.4th 1015 (9th Cir. 2025), cert. granted, — S. Ct. —, 2026 WL 120679 (2026). But *Anderson* is also consistent with the decision below. As in *Parker-Hannifin*, the plaintiffs challenged particular target date funds offered as options on the menu of their defined contribution plan. *Anderson*, 137 F.4th at 1019. Unlike the Sixth Circuit, the Ninth Circuit did adopt a "meaningful benchmark" requirement for such claims: when a plaintiff alleges imprudence based on a fiduciary's decision to offer one investment option rather than another, "[t]he key to nudging an inference of imprudence from possible to plausible is providing 'a sound basis for comparison—a meaningful benchmark.'" *Id.* at 1022 (citation omitted). And the Ninth Circuit further found that the complaint failed to sufficiently allege that the purported comparators for the challenged funds were meaningful benchmarks. *Id.* at 1023.

The Second Circuit's decision is fully consistent with that approach. The decision takes no position on whether or when a "meaningful benchmark" might be required. In fact, the decision does not discuss that concept at all but rather accepts that petitioner identified "peer" multiemployer plans. Pet. App. 10a. And the Ninth Circuit, like the Sixth, agrees with the Second Circuit's principle that courts must "assess 'a fiduciary's actions based upon information available to the fiduciary at the time of each investment decision and not from the vantage point of hindsight.'" *Anderson*, 137 F.4th at 1021 (citation omitted).

The third decision that petitioner cites is also off point. *Cal. Ironworkers Field Pension Tr.* v. *Loomis Sayles & Co.*, 259 F.3d 1036 (9th Cir. 2001). That case, on appeal after a bench trial, involved claims asserted by three ERISA trust funds against the funds' investment manager. *Id.* at 1040. The district court found that the investment manager had breached its duty of prudence with one of the trust funds, but not the other two, by investing thirty percent of its assets in "inverse floaters," which were a highly risky security backed by real estate mortgages and which led the funds to incur large losses. *Id.* at 1041. The Ninth Circuit affirmed the finding of imprudence because even though that one trust was a welfare fund with "very conservative investment guidelines," the defendant had invested a much greater percentage of its assets in the highly risky inverse floaters than what the defendant had invested for the two other trusts with less conservative guidelines. *Id.* at 1045.

There is no conflict between *California Ironworkers* and the decision below. Petitioner disagrees, arguing that *California Ironworkers* requires assessing the prudence of fund investments in relation to the portfolio as a whole and recognizes a possible claim if a plan invests much more in a particularly risky class of assets than other comparable plans. But the Second Circuit did not reject either of those points. As petitioner himself notes (Pet. 25), the Second Circuit has expressly endorsed the whole-portfolio approach of *California Ironworkers*. See *PBGC ex rel. St. Vincent Cath. Med. Ctrs. Ret. Plan* v. *Morgan Stanley Inv.*

*Mgmt. Inc.*, 712 F.3d 705, 716-717 (2d Cir. 2013). And in the decision here, the Second Circuit recognized the possibility that a complaint could sufficiently allege that an investment strategy was "such an extreme outlier" relative to peers to raise an inference of imprudence. Pet. App. 10a. The allegations in petitioner's complaint simply failed to plausibly do that. See *ibid.*

3. At times, petitioner seems to recognize the significant differences between this case and the others he cites. He describes his complaint as having more "varied allegations," which supposedly make this case "a more robust vehicle for the Court." Pet. 24; see *id.* at 31-33. But petitioner's effort to highlight the differing allegations in his case only confirms that it presents different (highly fact-specific) issues than the other decisions. Similar confirmation can be found in petitioner's reliance on cases on *both sides* of the "meaningful benchmark" circuit split. See *id.* at 25 (asserting that *Parker-Hannifin* and *Anderson* conflict with each other *and* the decision below). The decision below does not conflict with either side of that split because it does not raise the "meaningful benchmark" issue. And petitioner's heavy reliance on a single oral bench ruling from a federal district court likewise underscores the lack of a relevant circuit split. See *id.* at 30-31.

The Second Circuit broke no new ground in finding that petitioner's allegations failed to state a claim. It applied well-established legal principles to petitioner's specific allegations and theories. That decision implicates no circuit conflict and warrants no further review.

Nor should the Court hold this petition for *Anderson*. For the reasons already discussed, this case does not present the question in *Anderson*. So the fate of *Anderson*'s "meaningful benchmark" requirement will have no effect on the Second Circuit's ruling. Again, the Second Circuit accepted that petitioner had identified "peer" multiemployer plans. It did not hold that those plans were an improper basis for comparison. It simply held that under *Hughes*, petitioner's allegations, taken together, failed to plausibly describe conduct falling outside the range of reasonable judgments that a fiduciary may permissibly make.

**B. The Second Circuit's decision is correct.**

On top of being consistent with other circuits' cases, the decision below is correct. It articulates sound legal principles. And it properly applies them to the complaint's particular factual allegations.

1. First, the Second Circuit was right to hold (consistent with *Parker-Hannifin* and *Anderson*) that fiduciaries' decisions are not scrutinized with the benefit of perfect hindsight. That principle flows from the statutory text. The duty of prudence demands "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) (emphasis added). By judging fiduciaries based on "the circumstances then prevailing," the statute directs courts to consider how things would have appeared to a reasonable fiduciary at the time the challenged decision was made. This standard also comports with background principles of trust law: "Whether the

trustee is prudent in the doing of an act depends upon the circumstances as they reasonably appear to him at the time when he does the act and not at some subsequent time when his conduct is called in question." Restatement (Second) of Trusts § 174, cmt. b (1959).

Next, the Second Circuit was correct to rely on this Court's recognition of the "range of reasonable judgments a fiduciary may make"—especially when weighing "difficult tradeoffs" in a plan's particular circumstances. *Hughes*, 595 U.S. at 177; see Pet. App. 10a. Section 1104(a)(1)(B) is instructive here too: "[b]ecause the content of the duty of prudence turns on 'the circumstances * * * prevailing' at the time the fiduciary acts[,] the appropriate inquiry will necessarily be context specific." *Fifth Third Bancorp* v. *Dudenhoeffer*, 573 U.S. 409, 425 (2014) (quoting 29 U.S.C. 1104(a)(1)(B)); see *Hughes*, 595 U.S. at 177.

Petitioner asserts that the Second Circuit's decision somehow conflicts with *Hughes* and *Tibble* v. *Edison International*, 575 U.S. 523 (2015). But petitioner never explains these supposed conflicts. There is none. As the Second Circuit understood, *Hughes* supports its decision. And *Tibble* principally recognized "a continuing duty to monitor trust investments and remove imprudent ones." 575 U.S. at 529. Nothing in the decision below questions that duty. Contrary to petitioner's suggestion, *Tibble* does not compel courts to allow a claim to proceed whenever a plaintiff asserts a breach of the duty of prudence. On the contrary, this Court has made clear since *Tibble* that the motion to dismiss is an "important mechanism for weeding out meritless claims," and courts must engage in "careful, context-sensitive scrutiny of a complaint's allegations." *Dudenhoeffer*, 573 U.S. at 425; see also *Hughes*, 595 U.S. at 177. That is just what the Second Circuit did.

2. The Second Circuit also was right to determine that the complaint's allegations fail to raise a plausible inference of imprudence. Indeed, many of the complaint's allegations undermine petitioner's theory.

For example, while the complaint labels emerging markets and private equity investments as overly risky, it acknowledges that only those asset classes were projected to return above the 8.5% that the Fund set as its investment-return target, and it acknowledges too that Meketa warned the trustees of the risks. Pet. App. 136a-138a (Compl. ¶¶ 56-58). Although the complaint asserts that an 8.5% investment return was unrealistically high, the complaint never alleges that the Fund failed to *achieve* an 8.5% investment return. In fact, the Fund averaged an 11.96% investment return over the five-year period leading up to the proposed class period. C.A. App. 231. Fund evaluation reports from Meketa, moreover, show investment performance in line with the 8.5% target both during and before the class period. *Id.* at 418, 628. In addition, the complaint itself alleges that "the average pension fund return" of 66 state pension plans since 2010 was 9.7%. Pet. App. 171a (Compl. ¶ 98).

In short, petitioner fails to plausibly allege that pursuing an 8.5% target, and adopting the allocation needed to achieve it, were imprudent decisions that no reasonable fiduciary would have made in the Fund's difficult circumstances. Different fiduciaries may have landed on a different strategy, but the trustees and Meketa prudently exercised their judgment in light of the Fund's goals and situation and the information available at the time. The Second Circuit gave proper "regard to the range of reasonable judgments a fiduciary may make based on [their] experience and expertise." *Hughes*, 595 U.S. at 177.[3]

### C. This case is an unsuitable vehicle to address ERISA pleading requirements.

Even if this case did present some question warranting the Court's review, the case would be an unsuitable vehicle to address it for two main reasons.

1. To start, the trustees argued throughout the proceedings below that the courts lack jurisdiction. Even if petitioner had Article III standing at the time the suit was filed—because of the reduction in his benefits—the Fund's later receipt of $1.3 billion in special financial assistance through the American Rescue Plan Act mooted that controversy by restoring the Fund's level of funding and restoring the benefits that petitioner was entitled to under the plan terms before the reduction.

The Second Circuit acknowledged the general mootness principle: "[i]f an intervening circumstance deprives the plaintiff of a 'personal stake in the outcome of the lawsuit,' at any point during litigation, the action can no longer proceed and must be dismissed as moot." *Genesis Healthcare Corp.* v. *Symczyk*, 569

[3] The petition never challenges the Second Circuit's holding that Horizon was not plausibly acting as the Fund's fiduciary. As a result, petitioner has waived any further review of that holding.

U.S. 66, 72 (2013) (citation omitted). And it further recognized that the special financial assistance "led to the restoration of Carlisle's pension benefits." Pet. App. 6a. But the court ultimately rejected the mootness concern on the ground that the "collateral source" rule barred it "from considering benefits received from third parties in determining the extent of a plaintiff's recovery." *Ibid.* (citation omitted).

It is hardly clear that the Second Circuit's mootness ruling is correct. The "collateral source" rule that the Second Circuit invoked comes from its own precedent and state law, not this Court's jurisprudence. And it is a substantive rule, not a jurisdictional one: "[a]ccording to this doctrine, which is an established exception to the general rule that damages in a negligence action must be compensatory, a wrongdoer is not permitted to reduce a plaintiff's recovery because of benefits which the latter may have received from another source." *Cunningham* v. *Rederiet Vindeggen A/S*, 333 F.2d 308, 316 (2d Cir. 1964). It is an open question whether this Court would recognize such a principle on these facts.

But even if the Second Circuit's "collateral source" principle has some applicability here, it still does not mean that petitioner has a personal stake in obtaining additional recovery for the Fund. The Fund now has ample assets to pay petitioner's benefits and is at no risk of failure. As this Court explained in *Thole* v. *U.S. Bank N.A.*, 590 U.S. 538, 546 (2020), recovering money for a defined benefit plan in such circumstances will not provide personal relief to someone like petitioner because his benefits are governed by the terms of the plan. Indeed, the Second Circuit recently adhered to that understanding of *Thole* in a case decided after the decision below: "*Thole* precludes participants from seeking general monetary recoveries on behalf of a defined benefit plan, so long as the participants have not plausibly alleged a substantial risk of plan and employer failure." *Duke* v. *Luxottica U.S. Holdings Corp.*, 167 F.4th 16, 29 (2d Cir. 2026), petition for cert. pending, No. 25-1121 (filed Mar. 23, 2026).

At the very least, then, this Court would have to confront a substantial mootness concern if it were to grant certiorari. And because mootness implicates the Court's Article III jurisdiction, see *Genesis Healthcare*, 569 U.S. at 71-72, the Court would need to resolve the mootness concern before it could reach the merits. See, *e.g.*, *Steel Co.* v. *Citizens for a Better Env't*, 523 U.S. 83, 93-94 (1998). The Court has an "an independent obligation to determine whether subject-matter jurisdiction exists," *Arbaugh* v. *Y&H Corp.*, 546 U.S. 500, 514 (2006), and that obligation extends to mootness concerns, *e.g.*, *Kingdomware Techs., Inc.* v. *United States*, 579 U.S. 162, 169 (2016). This case therefore presents an unsuitable vehicle for deciding petitioner's merits issues.

2. Additionally, this case is a bad vehicle because it involves unusual facts that do not often generate litigation. Unlike every one of the appellate decisions on ERISA pleading requirements that petitioner cites, this case involves a multiemployer defined benefit pension plan. Such plans are relatively uncommon. There are over 800,000 ERISA pension plans; fewer than 2,500 are multiemployer plans. Employee Benefits Sec. Admin., U.S. Dep't of Labor, *Private*

*Pension Plan Bulletin: Abstract of 2023 Form 5500 Annual Reports* 10 (Jan. 2026), https://www.dol.gov/sites/dolgov/files/ebsa/researchers/statistics/retirement-bulletins/private-pension-plan-bulletins-abstract-2023.pdf. Given the much smaller number of multiemployer plans, and the apparent infrequency of litigation over such plans' investment allocation decisions, a decision by this Court on the current complaint would have limited utility for future disputes.

Petitioner may respond that the standards for prudence should not change based on the type of pension plan at issue. But the duty of prudence is inherently context-sensitive because it turns on the "circumstances * * * prevailing" when the fiduciary acts. 29 U.S.C. 1104(a)(1)(B). That is why this Court has repeatedly stressed that the judicial inquiry on a motion to dismiss an imprudence claim "will necessarily be context specific." *Dudenhoeffer*, 573 U.S. at 425; see also *Hughes*, 595 U.S. at 177. If the Court is going to decide a case about the pleading requirements for an imprudence claim, it should decide a case in a context that commonly sees litigation. The allegations collected in petitioner's complaint, on the other hand, do not frequently recur. For this reason too, the petition presents a bad vehicle for this Court's review.

## CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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