

No. _____

In the Supreme Court of the United States

WINSTON R. ANDERSON, CHRISTOPHER M. SULYMA,
on behalf of all those similarly situated,
Petitioners,

v.

INTEL CORPORATION INVESTMENT POLICY
COMMITTEE, ET AL.,
Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

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

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

PARTIES TO THE PROCEEDING

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

Respondents Intel Corporation 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 Klawter, Stuart Odell, Charlene Barshefsky, Susan L. Decker, John J. Donahue, Reed H. Hundt, James D. Plummer, Frank D. Yeary, Stacy Smith, Robert H. Swan, Todd Underwood, and George S. Davis were defendants-appellees below.

RELATED PROCEEDINGS

This case arises from the following proceedings:

- *Anderson v. Intel Corp. Inv. Policy Comm.*, No. 3:19-cv-04618-LHK (N.D. Cal.) (order dismissing with leave to amend Counts I–VI of consolidated complaint, issued January 21, 2021)
- *Anderson v. Intel Corp. Inv. Policy Comm.*, No. 3:19-cv-04618-LHK (N.D. Cal.) (order dismissing with prejudice Counts I–VI of consolidated complaint, issued January 8, 2022)
- *Anderson v. Intel Corp. Inv. Policy Comm.*, No. 3:19-cv-04618-VC (N.D. Cal.) (order dismissing with prejudice Count VII of consolidated complaint, issued July 25, 2022)
- *Anderson v. Intel Corp. Inv. Policy Comm.*, No. 22-16268 (9th Cir.) (opinion affirming, judgment entered May 22, 2025)

The following proceedings arose from the complaint brought by one of the plaintiffs that was later consolidated into this case.

- *Sulyma v. Intel Corp. Inv. Policy Comm.*, No. 15-cv-04977-NC (N.D. Cal.) (order converting motion to dismiss into motion for summary judgment and ordering limited discovery, issued August 18, 2016)
- *Sulyma v. Intel Corp. Inv. Policy Comm.*, No. 15-cv-04977-NC (N.D. Cal.) (order granting summary judgment to defendants, issued March 31, 2017)

- *Sulyma v. Intel Corp. Inv. Policy Comm.*, No. 17-15864 (9th Cir.) (opinion reversing, judgment entered November 28, 2018)
- *Intel Corp. Inv. Policy Comm. v. Sulyma*, No. 18-1116 (S. Ct.) (opinion affirming, issued February 26, 2020)

TABLE OF CONTENTS

Question presented	i
Parties to the proceeding	ii
Related proceedings.....	iii
Table of authorities	vii
Introduction	1
Opinions below	3
Jurisdiction	3
Constitutional and statutory provisions	3
Statement	4
I. Statutory background.....	4
II. Factual background	6
III. Procedural history.....	10
Reasons for granting the petition	13
I. The petition should be held for <i>Parker-Hannifin</i> , which asks the Court to address the validity of a “meaningful benchmark” requirement in ERISA duty-of-prudence cases.....	13
II. If the Court does not grant the petition for certiorari in <i>Parker-Hannifin</i> , then it should grant plenary review in this case.....	18
Conclusion	19

Appendix A	Opinion of the United States Court of Appeals for the Ninth Circuit (May 22, 2025)	App. 1a
Appendix B	Order of the United States District Court for the Northern District of California Dismissing Count VII with Prejudice (Jul. 25, 2022)	App. 32a
Appendix C	Order of the United States District Court for the Northern District of California Dismissing Counts I–VI with Prejudice (Jan. 8, 2022)	App. 33a

TABLE OF AUTHORITIES

Cases

<i>Albert v. Oshkosh Corp.</i> , 47 F.4th 570 (7th Cir. 2022)	16–17
<i>Anderson v. Intel Corp. Investment Policy Committee</i> , 2021 WL 229235 (N.D. Cal. 2021)	11
<i>Anderson v. Intel Corp. Investment Policy Committee</i> , 137 F.4th 1015 (9th Cir. 2025)	11, 17
<i>Central States, Southeast & Southwest Areas Pension Fund v. Central Transport, Inc.</i> , 472 U.S. 559 (1985)	5
<i>Davis v. Washington University in St. Louis</i> , 960 F.3d 478 (8th Cir. 2020)	12
<i>Fifth Third Bancorp. v. Dudenhoeffer</i> , 573 U.S. 409 (2014)	1, 5, 18–19
<i>Hughes v. Northwestern University</i> , 595 U.S. 170 (2022)	1, 5, 18
<i>Intel Corp. Investment Policy Committee v. Sulyma</i> , 589 U.S. 178 (2020)	10
<i>Johnson v. Parker-Hannifin Corp.</i> , 122 F.4th 205 (6th Cir. 2024)	2, 13–17, 19
<i>Massachusetts Mutual Life Insurance Co. v. Russell</i> , 473 U.S. 134 (1985)	5

<i>Massachusetts v. Morash</i> , 490 U.S. 107 (1989)	4
<i>Matney v. Barrick Gold of North America</i> , 80 F.4th 1136 (10th Cir. 2023)	16
<i>Matousek v. MidAmerican Energy Co.</i> , 51 F.4th 274 (8th Cir. 2022)	15–17
<i>Meiners v. Wells Fargo & Co.</i> , 898 F.3d 820 (8th Cir. 2018)	16–17, 19
<i>Mertens v. Hewitt Associates</i> , 508 U.S. 248 (1993)	5
<i>Nachman Corp. v. Pension Benefit Guaranty Corp.</i> , 446 U.S. 359 (1980)	4
<i>Parker-Hannifin Corp. v. Johnson</i> , 145 S. Ct. 2842 (2025)	2, 13, 16
<i>Shaw v. Delta Air Lines, Inc.</i> , 463 U.S. 85 (1983)	4
<i>Stegemann v. Gannett Co.</i> , 970 F.3d 465 (4th Cir. 2020)	5
<i>Tibble v. Edison International</i> , 575 U.S. 523 (2015)	5
Statutes	
29 U.S.C. § 1001	4
29 U.S.C. § 1104	1, 4–5

Other authorities

Ilia D. Dichev & Gwen Yu, <i>Higher risk, lower returns: What hedge fund investors really earn</i> , 100 J. Fin. Econ. 248 (2011)	7
Petition for Certiorari, <i>Parker-Hannifin Corp. v. Johnson</i> , No. 24-1030 (March 26, 2025).....	2, 15, 19
Brief in Opposition, <i>Parker-Hannifin Corp. v. Johnson</i> , No. 24-1030 (May 21, 2025)	3, 14, 19
Reply Brief, <i>Parker-Hannifin Corp. v. Johnson</i> , No. 24-1030 (June 9, 2025).....	17
U.S. Government Accountability Office, <i>Guidance Needed to Better Inform Plans of the Challenges and Risks of Investing in Hedge Funds and Private Equity</i> (Aug. 2008)	6

Rules

Supreme Court Rule 30.1	3
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INTRODUCTION

As this Court has consistently recognized, a court’s inquiry into whether a plaintiff has adequately alleged that a fiduciary breached ERISA’s duty of prudence “will necessarily be context specific” because the content of that duty “turns on ‘the circumstances ... prevailing’ at the time the fiduciary acts.” *Fifth Third Bancorp. v. Dudenhoeffer*, 573 U.S. 409, 425 (2014) (quoting 29 U.S.C. § 1104(a)(1)(B)). “Categorical” pleading rules are thus “inconsistent with the context-specific inquiry that ERISA requires.” *Hughes v. Nw. Univ.*, 595 U.S. 170, 173 (2022).

In the decision below, however, the Ninth Circuit imposed just such a categorical pleading rule. The plaintiffs in this case alleged that Intel’s fiduciaries breached the duty of prudence by imprudently allocating billions of dollars in retirement plan assets to costly and underperforming hedge and private-equity funds—a reckless investment strategy that no other similarly situated retirement plan or fund employed. Yet the Ninth Circuit ruled that ERISA imposes a “meaningful benchmark” threshold pleading requirement on such a claim, and requires that a complaint must identify a “relevant comparator” fund with “similar objectives” against which the performance of the challenged fund can be measured. App. 11a. In reaching this conclusion, the Ninth Circuit freely admitted that nothing in ERISA’s text explicitly requires such a rule; instead, the court found it “implicit” that, for claims alleging that fiduciaries employed “improper methods” in selecting and allocating investments, a plaintiff “must compare” the challenged fund to others that “are meaningfully similar.” App. 13a–14a.

The Ninth Circuit’s approach is incorrect and harmful. It has no basis in the statute, contravenes this Court’s precedent, and immunizes fiduciaries from liability where they engage in reckless investment decisionmaking that no other investment professional would dare employ—denying participants and beneficiaries ERISA’s protections when they need them the most.

A pending petition for certiorari raises a similar question. See *Parker-Hannifin Corp. v. Johnson*, No. 24-1030 (March 26, 2025). Unlike the Ninth Circuit here, the Sixth Circuit in that case held that ERISA does not impose any “meaningful benchmark” threshold pleading requirement for claims that a fiduciary breached ERISA’s duty of prudence by imprudently investing plan assets. *Johnson v. Parker-Hannifin Corp.*, 122 F.4th 205, 216 (6th Cir. 2024). In that case, the petitioner argued that the Sixth Circuit created “a circuit split on the requirements for pleading a plausible ERISA claim based on the relative underperformance of a plan investment.” *Parker-Hannifin* Pet. 11. Given the significance of the issue, this Court invited the Solicitor General to file a brief expressing the views of the United States. See 145 S. Ct. 2842 (2025) (mem.). That brief remains outstanding. Because this petition presents a similar question to the one in *Parker-Hannifin*, it should be held pending the disposition of the petition in *Parker-Hannifin* and then disposed of as appropriate.

If the Court denies certiorari in *Parker-Hannifin*, however, it should grant plenary review in this case. As the respondents in *Parker-Hannifin* have pointed out, the Sixth Circuit’s decision in that case is interlocutory, claims against the fiduciaries will move forward no matter what,

and the opinion includes an alternative holding that could impede a clear answer over whether meaningful benchmarks are required at the pleading stage. *See* Brief in Opposition at 23–24, *Parker-Hannifin Corp. v. Johnson*, No. 24-1030 (May 21, 2025). The Ninth Circuit’s decision here, in contrast, has none of these vehicle problems.

OPINIONS BELOW

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

JURISDICTION

The Ninth Circuit filed its opinion on May 22, 2025. On August 7, 2025, Justice Kagan extended the time to file a petition for certiorari to October 19, 2025. *See* Supreme Ct. R. 30.1. The Court’s jurisdiction rests on 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

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

a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and ... with the care, skill,

prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

29 U.S.C. § 1104(a)(1)(B).

STATEMENT

I. Statutory background

Congress enacted ERISA to “promote the interests of employees and their beneficiaries in employee benefit plans.” *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 90 (1983).¹ The law was designed “to safeguard employees from the abuse and mismanagement of funds that had been accumulated to finance various types of employee benefits.” *Massachusetts v. Morash*, 490 U.S. 107, 112 (1989). Congress found that the “inadequacy” of existing management standards “endangered” “the soundness and stability of plans.” 29 U.S.C. § 1001(a). Congress thus established safeguards intended to “insure against the possibility that the employee’s expectation of the benefit would be defeated through poor management.” *Morash*, 490 U.S. at 115. Congress imported these high duties into ERISA for a very good reason: “to prevent the great personal tragedy” that occurs when employers promise their employees retirement benefits but fail to deliver them. *Nachman Corp. v. Pension Benefit Guar. Corp.*, 446 U.S. 359, 374 (1980).

To that end, ERISA codified demanding fiduciary duties that impose “strict standards of trustee conduct

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

derived from the common law of trusts.” *Dudenhoeffer*, 573 U.S. at 416 (quoting *Cent. States, Se. & Sw. Areas Pension Fund v. Cent. Transp., Inc.*, 472 U.S. 559, 570 (1985)). Those standards include “a number of detailed duties and responsibilities, which include ‘the proper management, administration, and investment of [plan] assets.’” *Mertens v. Hewitt Assocs.*, 508 U.S. 248, 251–52 (1993) (alteration in original) (quoting *Mass. Mut. Life Ins. Co. v. Russell*, 473 U.S. 134, 142–43 (1985)). ERISA’s fiduciary duties are considered the “highest known to the law.” *Stegemann v. Gannett Co.*, 970 F.3d 465, 469 (4th Cir. 2020) (collecting references).

This case is about the duty of prudence. ERISA requires fiduciaries to act “with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims.” 29 U.S.C. § 1104(a)(1)(B). The duty of prudence also extends beyond the initial selection of investments; it imposes a “continuing duty to monitor trust investments and remove imprudent ones.” *Tibble v. Edison Int’l*, 575 U.S. 523, 529 (2015). And “[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.” *Dudenhoeffer*, 573 U.S. at 425. At the pleading stage, that requires “careful, context-sensitive scrutiny of a complaint’s allegations.” *Id.*; *Hughes*, 595 U.S. at 173 (rejecting reliance on “a categorical rule” as “inconsistent with the context-specific inquiry that ERISA requires”).

II. Factual background

Hedge funds and private-equity funds are actively managed investment funds that are marketed as alternatives to traditional investments such as stocks, bonds, and mutual funds. 3-ER-629, 641. They charge investors high fees—up to ten times more than those charged by traditional investment funds like mutual funds, 3-ER-636—based on the promise of market-beating returns in up and down markets. And they pose a high degree of risk to investors—hedge-fund investments, for example, are limited to “accredited investors,” i.e., high-net worth individuals or institutional investors whom regulators have determined can afford greater risk of losses. 3-ER-629.

In the wake of the 2008 financial crisis, however, the supposed benefits of these asset classes for defined-contribution plans were recognized to be overstated, if not illusory. As early as August 2008, federal regulators warned that hedge funds and private equity were risky investments—especially for retirement plans—in light of their significant use of leverage; costly fee structures; lack of transparency; valuation risk; and liquidity limitations. *See* 3-ER-626 (citing U.S. Gov’t Accountability Off., *Guidance Needed to Better Inform Plans of the Challenges and Risks of Investing in Hedge Funds and Private Equity* 22–26, 33–37 (Aug. 2008), <https://perma.cc/57AK-J82L>). And post-financial-crisis data confirmed that hedge funds had underperformed traditional equity and bond investments: from 1998 to 2010, hedge funds as a category produced fewer risk-adjusted returns than a broad bond-market index, a broad stock-market index, and a traditional 60%/40% blend of equities and bonds. 3-ER-617–20. Other

contemporary analyses found the same. *See, e.g.*, 3-ER-631 (“Investors in a simple portfolio of stocks and bonds earned more than [hedge-fund] investors, while paying lower fees, with no need for complicated due diligence, and without the need to sacrifice liquidity.”); 3-ER-666 (From 1998 to 2010, “the effective return to hedge-fund clients has only been 2.1% a year, half the return they could have achieved by investing in boring old Treasury bills.”); Ilia D. Dichev & Gwen Yu, *Higher risk, lower returns: What hedge fund investors really earn* 100 J. Fin. Econ. 248 (2011) (cited at 3-ER-663) (“[T]he real alpha of hedge fund investors is close to zero” because “returns [we]re reliably lower than the return on the S&P 500 index, and [we]re only marginally higher than the risk-free rate as of the end of 2008.”). By 2009, then, investment professionals were well aware that hedge-fund managers were being paid higher fees and taking greater risks with little to show for it.

Yet, starting in 2009, Intel’s fiduciaries decided to adopt a radical new asset-allocation strategies for several of Intel’s ERISA funds—its target-date funds (TDFs) and its diversified fund (GDF). The plan fiduciaries massively increased these funds’ allocations in hedge funds, private equity, and other non-traditional assets like commodities, at the expense of traditional asset classes like domestic equities and bonds. 3-ER-580. From 2009 to 2013, the Intel fiduciaries increased the GDF’s dollar-value allocation to non-traditional investments from \$214 million to almost \$2.33 billion—an 1,088% increase. 3-ER-580–81. They did the same with Intel’s TDFs. Between 2009 and 2011, the target date funds went from only a million invested in hedge funds to \$680 million. 3-ER-657–58. In 2011, the fiduciaries increased hedge-fund and other non-traditional asset allocations to 23%. 3-ER-581.

As a result of the Intel fiduciaries' unprecedented allocation strategy, hedge-fund and private-equity investments made up a disproportionately large percentage of the assets in Intel's funds. By 2014, for example, the Intel 2030 TDF had approximately 21% of its assets allocated to hedge funds and 5% to commodities—far exceeding comparable TDFs offered to defined contribution plans, which typically have no allocation to hedge funds at all. 3-ER-623–25. Other 2030 TDFs offered by major investment-management firms like Vanguard allocated on average less than 3% of their assets to *any* non-traditional investments (i.e., those other than stocks and bonds). 3-ER-623. One analysis showed that, out of fifty-one professional TDF providers, only eight allocated *any* assets to alternative investments, and only one exceeded an allocation percentage of 7.3%. 3-ER-625. The GDF's asset allocation model was even more lopsided. It consistently allocated over 50% of fund assets to “alternative” investments such as hedge funds, private equity, and commodities. *Id.* Similar funds, by contrast, allocated no assets to hedge funds or private equity. *Id.*

At the time, Intel's unusual investment strategy was met with skepticism. As one report noted, by deciding to use “expensive, opaque and potentially risky hedge funds in its main 401k investment options,” the Intel fiduciaries had “embarked, essentially, on an experiment with nearly \$14 billion in worker retirement money for more than 63,000 participants.” 3-ER-581–82. A financial commentator observed in early 2014 that Intel's retirement plans had “been infiltrated by hedge funds,” and Intel's fiduciaries' radical non-traditional investment strategy amounted to “institutional gambling with employees['] assets.” 3-ER-581. Meanwhile, fiduciaries

responsible for this strategy were also responsible for Intel Capital—the company’s corporate venture arm which partners with “co-investing companies,” like hedge funds and private-equity firms. 3-ER-647–52. Many of Intel Capital’s co-investing partners (major hedge funds like the Carlyle Group, Bain Capital, TPG, and Black Rock) are the same funds in which Intel invested its retirement-plan assets. 3-ER-648–52.

The outcome of the Intel fiduciaries’ unprecedented investment strategy was disastrous for employees but not surprising: Intel funds performed worse than comparable funds while charging higher fees, resulting in plan participants losing hundreds of millions of dollars in retirement savings. On the cost side, the new asset-allocation model sent the Intel plans’ investment expenses skyrocketing. By 2014, the Intel TDFs’ expense ratio was more than double the average for target-date funds, and the GDF’s ratio was nearly four times the average for non-target-date balanced funds. 3-ER-587–96, 610. On the benefit side, there was nothing to show for it. From 2011 to 2018, Intel’s TDFs consistently underperformed comparable mutual funds provided by major firms like Vanguard and Fidelity as well as “category benchmarks” for target-date funds published by Dow Jones, S&P, and Morningstar. 3-ER-597–604. The GDF fared similarly. It consistently underperformed comparable, cheaper alternatives offered by institutions like Vanguard and American Funds; underperformed 90% of its peers in a study of a ten-year period ending in 2014; and even underperformed the very benchmarks that Intel fiduciaries used in fund documents and fact sheets provided to employees. 3-ER-606–07, 609–10, 612.

Plan participants lost millions. “Over time, even seemingly small differences in fees and performance can result in vast differences in the amount of benefits available at retirement.” 3-ER-585. A typical Intel plan participant would have hundreds of thousands more dollars of retirement savings if Intel fiduciaries had selected prudent target-date and balanced funds for Intel employees’ retirement savings. 3-ER-604–06.

III. Procedural history

At issue in this case are two Intel sponsored defined contribution plans, the Intel 401(k) Savings Plan and the Intel Retirement Contribution Plan. 3-ER-545. As of 2015 the 401(k) plan held approximately \$8.5 billion in assets, 3-ER-569, and the retirement plan held approximately \$6.3 billion in assets, 3-ER-571.

The case was originally brought by Christopher Sulyma, a former Intel employee and participant in both Intel’s 401(k) savings plan and its retirement plan. App. 40a. Mr. Sulyma filed this case in 2015, challenging the Intel fiduciaries’ mismanagement of these plans and their breaches of ERISA’s fiduciary duties. App. 40a. The district court initially granted summary judgment in favor of the plan fiduciaries on the theory that Mr. Sulyma had actual knowledge of the claims beyond the time allowed under ERISA’s statute of limitations. App. 43a. This Court ultimately reversed that decision. *See Intel Corp. Inv. Pol’y Comm. v. Sulyma*, 589 U.S. 178 (2020) (addressing the “actual knowledge” requirement in ERISA’s statute of limitations).

While *Sulyma* was on appeal, Winston Anderson, a former Intel employee who worked at the company for fifteen years and is a fully vested participant in both Intel’s 401(k) savings plan and its retirement plan, filed

suit in 2019 raising similar claims as those in Mr. Sulyma’s case. App. 43a. Soon after filing, Mr. Anderson’s case was stayed pending this Court’s decision in *Sulyma*. After remand, the two cases were consolidated. App. 44a.

The Intel fiduciaries filed a motion to dismiss the consolidated complaint, which the district court granted. *Anderson v. Intel Corp. Inv. Pol’y Comm.*, 2021 WL 229235 (N.D. Cal. 2021). The district court agreed with the plaintiffs that “plausible allegations of self-dealing or conflicts of interest, combined with plausible allegations of higher-than-average fees and poor performance suffered by investments, are sufficient to state a claim for breach of the duty of prudence under ERISA.” *Id.* at *11. But, as relevant here, it found that the allegations of poor performance and excessive fees were not plausible because they failed to allege “adequate benchmarks against which to compare the Intel Funds.” *Id.* at *8; *see also id.* at *9 (noting that the plaintiffs “failed to adequately plead factual allegations to support their claim that [they] have provided a meaningful benchmark against which to compare the fees incurred by the Intel Funds”). The court also found that the plaintiffs failed to plausibly allege that fiduciaries in 2011 would be aware of the risks of hedge-fund and private-equity investments. *Id.* at *11. And it determined that the plaintiffs’ allegations about Intel’s conflicted interests were “conclusory.” *Id.* at *11–12.

The Ninth Circuit affirmed. *Anderson v. Intel Corp. Inv. Pol’y Comm.*, 137 F.4th 1015 (9th Cir. 2025); App. 1a. Adopting the district court’s view of the required pleading standards, the Ninth Circuit held that, to state imprudent-investment claims like those here, a plaintiff *must* include in the complaint a “meaningful

benchmark”—which the court described as a “relevant comparator [fund] with similar objectives.” App. 12a. The court readily acknowledged that nothing in the plain language of ERISA explicitly demanded such a pleading rule, but it nevertheless reasoned that the requirement was “implicit.” *Id.* As the Ninth Circuit saw it, “to the extent a plaintiff asks a court to infer that a fiduciary used improper methods based on the performance of investments,” the plaintiff “must compare th[e funds’] performance to funds or investments that are meaningfully similar.” App. 14a–15a; *see also* App. 15a (applying this same rule to a claim that “investors ... incurred higher fees”). And this was true, according to the Ninth Circuit, even if the plaintiff alleges that “there are *no* meaningful comparators for the fiduciaries’ decision” because the fiduciaries’ investment decision “was unusual, if not unparalleled.” App. 13a. Absent pleading a “meaningful benchmark,” the Ninth Circuit held, claims that a fiduciary imprudently invested plan participants’ retirement savings will fail.

What’s more, the Ninth Circuit also held that none of the comparator funds or analyses contained in the plaintiffs’ 163-page amended complaint were sufficiently alike to the Intel funds to satisfy this “meaningful benchmark” requirement. In the court’s view, these “putative comparators were not truly comparable because they had ‘different aims, different risks, and different potential rewards.’” App. 14a (quoting *Davis v. Washington Univ. in St. Louis*, 960 F.3d 478, 485 (8th Cir. 2020)).

To reach this conclusion, the court flyspecked purported differences with the comparator plans—focusing on what it saw as the “objectives” of the relevant

funds. App. 15a–18a. It relied on the Intel fiduciaries’ contemporaneous explanation for their novel investment strategy—“reduc[ing] investment risk by investing in assets whose returns are less correlated to equity markets”—to conclude that none of the various comparators offered by the plaintiffs were sufficiently “meaningful” comparators. *See* App. 13a–14a. Because none of the other funds stated that they employed the same “approach” of pursuing alternate investments with the “objective” of lowering risk, they failed to meet the Ninth Circuit’s demanding pleading standard. App. 13a–15a.

REASONS FOR GRANTING THE PETITION

I. The petition should be held for *Parker-Hannifin*, which asks the Court to address the validity of a “meaningful benchmark” requirement in ERISA duty-of-prudence cases.

This Court has already called for the views of the Solicitor General in *Parker-Hannifin Corp. v. Johnson* (No. 24-1030), which raises a similar question. 145 S. Ct. 2842 (June 30, 2025) (mem.). Both cases pose the question of whether ERISA imposes a “meaningful benchmark” requirement at the pleading stage in cases alleging a breach of ERISA’s duty of prudence based on fund underperformance. If the Court grants certiorari in that case, its ruling will shed significant light on the correctness of the Ninth Circuit’s decision. For that reason, this petition should be held pending resolution of the petition in *Parker-Hannifin*.

A. In *Johnson v. Parker-Hannifin Corp.*, the Sixth Circuit held that imprudent-investment claims against Parker-Hannifin and its plan managers could move past the pleading stage. 122 F.4th 205 (6th Cir. 2024). There,

the plaintiffs alleged that the defendants violated their fiduciary duties by, among other things, imprudently retaining an underperforming fund as an investment option for beneficiaries. *Id.* at 212. The district court dismissed the claims on the ground that the plaintiffs had not alleged a “meaningful benchmark” against which to evaluate the underperforming fund. BIO at 8.

The Sixth Circuit reversed. It rejected the defendants’ argument that a “meaningful benchmark” is always required when plaintiffs allege that fiduciaries imprudently invested plan assets based on an underperforming fund. *Johnson*, 122 F.4th at 216. The existence of a comparable higher-performing fund, the court made clear, is neither necessary nor sufficient to plausibly allege a breach of ERISA’s duty of prudence. *Id.* That’s because the inquiry is “context-specific”: Depending on the other allegations in the complaint, and the circumstances of the alleged violation, a “meaningful benchmark” may be more or less important to stating a claim. *Id.* At its core, the question in imprudent-investment cases is whether a plaintiff has pled “facts sufficient to give rise to an inference” that the fiduciaries’ “real-time decision-making process” was inadequate. *Id.*

Even so, the Sixth Circuit also held that, “[t]hough a meaningful benchmark is not required to plead a facially plausible claim of imprudence,” the plaintiffs did “in fact plead a meaningful benchmark.” *Id.* For instance, the complaint alleged that the challenged funds were “designed to meet industry-recognized benchmarks” and that they had underperformed those industry-recognized benchmarks, like the S&P target-date fund. *Id.* at 217. As the Sixth Circuit explained, because “tracking an industry-recognized index is the ‘investment goal’ of a

passively managed target date fund,” a “relevant market index is inherently a meaningful benchmark.” *Id.* (quoting *Matousek v. MidAmerican Energy Co.*, 51 F.4th 274, 281 (8th Cir. 2022)). Thus, by alleging that the challenged fund had failed to track the performance of the fund it was “attempting to mimic,” the complaint adequately alleged that the fiduciaries had imprudently invested plan assets. *Id.*

No additional detail was required at the pleading stage. The court rejected the argument that the complaint did not allege enough detail about the benchmark—“i.e., its risk profile, bond-to-equity ratio, and investment strategy”—to “adequately compar[e]” the funds’ performance. *Id.* at 218 (citing *id.* at 232–33 (Murphy, J., dissenting)). Requiring that level of detail, the Sixth Circuit explained, is inconsistent with basic pleading standards. To adequately allege a meaningful benchmark, a complaint need not establish a one-to-one match between a comparator and the challenged fund. *Id.* at 217–18. Instead, “[t]he appropriate inquiry is whether the complaint alleges enough facts to permit the reasonable inference that the ... benchmark would allow a jury to assess appropriately” the performance of the challenged funds and the prudence of the fiduciaries’ decision-making process. *Id.* at 218.

B. Parker-Hannifin and the fiduciaries petitioned this Court for certiorari. *See* Pet. In support, they argued that the Sixth Circuit’s decision “creates a circuit split on the requirements for pleading a plausible ERISA claim based on the relative underperformance of a plan investment.” *Id.* at 11. The petition also took issue with how the Sixth Circuit purportedly “reimagined the meaningful-benchmark standard.” *Id.* In the petitioners’ view, the

Sixth Circuit’s approach renders the standard “meaningless for pleadings in future cases” and “conflicts with other circuit precedent.” *Id.* The petition identified the Seventh, Eighth, and Tenth Circuits as holding that these kinds of ERISA claims “require a sound basis for comparison” to be identified at the pleading stage. *Id.* 11–14 (citing, among others, *Meiners v. Wells Fargo & Co.*, 898 F.3d 820 (8th Cir. 2018); *Matousek*, 51 F.4th 274; *Albert v. Oshkosh Corp.*, 47 F.4th 570 (7th Cir. 2022); *Matney v. Barrick Gold of N. Am.*, 80 F.4th 1136 (10th Cir. 2023)). Petitioners assert that the Sixth Circuit opinion represented a “wholesale repudiation” and “reimagination” of the meaningful-benchmark requirement established by these other circuits, and that this Court’s intervention “is needed to restore uniformity to the law.” *Id.* at 19–20.

On June 30, 2025, this Court invited the Solicitor General to file a brief in *Parker-Hannifin* expressing the views of the United States. 145 S. Ct. 2842 (June 30, 2025) (mem.). That brief is pending.

C. Because this case raises a substantially similar question, the Court should hold this petition pending its disposition of the certiorari petition in *Parker-Hannifin*. Just as in *Parker-Hannifin*, the issue in this case is whether ERISA imposes—at the pleading stage—a “meaningful benchmark” requirement for claims predicated on fund underperformance. And here, to support its adoption of the “meaningful benchmark” pleading requirement, the Ninth Circuit explicitly relied on the decisions from the Seventh, Eighth, and Tenth Circuits that are canvassed in the *Parker-Hannifin* petition. *See* App. 12a, 15a. (citing *Meiners*, 898 F.3d at 822; *Matousek*, 51 F.4th at 278; *Albert*, 47 F.4th at 581–

82); *see also* Reply Br. at 1, 6, *Parker-Hannifin Corp. v. Johnson*, No. 24-1030 (June 9, 2025) (describing the Ninth Circuit opinion in this case as “affirm[ing] the dismissal of a very similar challenge to a suite of target date funds” and “put[ting] the conflict into sharp relief”).

Like *Parker-Hannifin*, this case also raises a question about the standards that govern any requirement that plaintiffs must identify comparator funds. In the decision below in that case, the Sixth Circuit held that, although not required, the complaint had adequately identified a comparator fund because the challenged fund was “expressly structured to meet an industry benchmark,” and the S&P target date fund was precisely such an “industry-accepted” fund. *Johnson*, 122 F.4th at 217. In reaching this conclusion, the Sixth Circuit rejected the view that, to be “meaningful,” a comparator fund must be identical in virtually all respects with the challenged fund—including in its “risk profile, bond-to-equity ratio, and investment strategy.” *Id.* at 217–18. The Ninth Circuit, by contrast, categorically rejected numerous similar comparator funds contained in the complaint—including the very benchmarks selected by the Intel fiduciaries for comparison—and even went so far as to hold that, where the basis of the claim is that the fiduciaries acted so unusually that no similar fund exists, the “meaningful benchmark” requirement bars the claim. *Anderson*, 137 F.4th at 1023–25.

Given this, a decision by this Court on the merits in *Parker-Hannifin* may resolve the question decided by the Ninth Circuit here. For instance, rejecting the *Parker-Hannifin* petitioners’ view would underscore this Court’s recognition that the viability of a duty-of-prudence claim is “necessarily ... context specific,” and entails “careful,

context-sensitive scrutiny of a complaint’s allegations.” *Dudenhoeffer*, 573 U.S. at 425. Such a holding would cast significant doubt on the Ninth Circuit’s opinion below—which relied on “a categorical rule” rather than engaging in the “context-specific inquiry that ERISA requires.” *Hughes*, 595 U.S. at 173. And, at the very least, a decision in *Parker-Hannifin* will likely shed significant light on how lower courts approach duty-of-prudence claims based on underperformance like the ones at issue here.

II. If the Court does not grant the petition for certiorari in *Parker-Hannifin*, then it should grant plenary review in this case.

As already discussed, the issue raised by this petition—whether plaintiffs must plead a “meaningful benchmark” to state a claim for a violation of the fiduciary duty of prudence under ERISA—has generated substantial attention in the appellate courts. By calling for the views of the Solicitor General in *Parker-Hannifin*, this Court has already acknowledged that the issue poses an important question of federal law.

If the Court decides not to grant certiorari in *Parker-Hannifin*, then it should grant plenary review in this case. The extratextual “meaningful benchmark” requirement adopted by the Ninth Circuit undercuts ERISA’s role in protecting participants and beneficiaries, and it entirely forecloses relief in circumstances where fiduciaries’ conduct is so beyond the pale that no close comparator even exists. As even the Ninth Circuit acknowledged, nothing in ERISA’s text explicitly requires such a rule. *See* App. 12a. Instead, as this Court has explained, the proper approach is for courts to engage in “careful, context-sensitive scrutiny of a complaint’s

allegations” under the normal plausibility pleading standards for a motion to dismiss. *Dudenhoeffer*, 573 U.S. at 425–26.

The Ninth Circuit’s opinion also squarely decided the question presented: It expressly held that “[w]hen an ERISA plaintiff” alleges an imprudent-investment claim “by relying 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’” and affirmed dismissal of the claims for failing to meet this requirement. App. 11a (quoting *Meiners*, 898 F.3d at 822). In the decision below in *Parker-Hannifin*, by contrast, the Sixth Circuit held, in the alternative, that that the complaint did “in fact plead a meaningful benchmark.” 122 F.4th at 216; *see* Pet. 1. So this Court could affirm in that case without answering whether a meaningful benchmark is required. And unlike *Parker-Hannifin* (which remains ongoing, *see* Pet. 7 n.1; BIO 24), the Ninth Circuit’s decision here has ended the case.

CONCLUSION

The petition for a writ of certiorari should be held pending this Court’s disposition of *Parker-Hannifin Corp. v. Johnson*, No. 24-1030, and then disposed of accordingly.

Respectfully submitted,

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