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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

ALEXANDRO GONZALEZ, on behalf of himself and all others similarly situated, *Plaintiff,* v. JPMORGAN CHASE BANK, N.A., *et al.*, *Defendants*.	Case No. 2:25-cv-01889-WJM-JRA

REPLY IN SUPPORT OF MOTION FOR LEAVE TO FILE BRIEF OF THE STABLE VALUE INVESTMENT ASSOCIATION AND CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS *AMICI CURIAE*

Plaintiff's opposition to the motion for leave to file is long on pejorative rhetoric, but short on substance that would warrant this Court denying *amici*'s motion. Rather than mount a serious objection to the proposed *amicus* brief, Plaintiff denigrates SVIA and the Chamber and their efforts to facilitate a fulsome debate on the critical issues at play here. *See, e.g.*, Opp. 8 (referring to proposed *amici* as "mercenaries"). Plaintiff's arguments are misguided. As the motion for leave explains, SVIA brings a unique perspective to the Court as a result of its work educating employers, employees, government officials, and the general public about the contributions that stable-value products can make toward efforts to save for retirement. Likewise, the Chamber's distinct vantage point, informed by its role representing hundreds of thousands of members that maintain or provide services to ERISA-governed retirement plans, allows it to offer valuable context to the Court. And, critically, "context" is precisely what the Supreme Court has instructed courts to consider when evaluating whether a plaintiff's allegations satisfy Rule 8(a). *See Hughes v. Northwestern Univ.*, 595 U.S. 170, 177 (2022). This Court should permit the *amici* to file the proposed amicus brief.

1. The opposition begins from an inaccurate premise. Plaintiff asserts that *amici* "have taken the extraordinary step of seeking to intercede as a purported *amicus* on behalf of Defendants – something that is typically reserved for appellate matters." Opp. 2. That is incorrect. *Amici*'s motion cites numerous cases in which

district courts have permitted the Chamber to submit amicus briefs, all over an opposition.[1] And that is just the tip of the iceberg: even looking *solely* at ERISA class actions, courts across the country have overwhelmingly granted motions for leave to file amicus briefs at the motion-to-dismiss stage, many over an opposition.[2]

Those briefs often addressed similar issues to the ones presented here, including ERISA pleading-standard issues, and "offer[ed] a valuable perspective on the issues presented," given *amici*'s "experience with both retirement plan management and ERISA litigation." *Sigetich v. Kroger Co.*, No. 21-697 (S.D. Ohio July 22, 2022), ECF No. 47 (granting the Chamber leave to file over an opposition). As a district court in the Northern District of Illinois explained in granting the Chamber's motion for leave to file an *amicus* brief at the motion-to-dismiss stage in

[1] Mot. 5-6 (citing *Locascio v. Fluor Corp.*, No. 22-154 (N.D. Tex. Oct. 20, 2022), ECF No. 63; *Barcenas v. Rush Univ. Med. Ctr.*, No. 22-366 (N.D. Ill. Apr. 4, 2022), ECF No. 38; *Singh v. Deloitte LLP*, No. 21-8458 (S.D.N.Y. Apr. 14, 2022), ECF No. 41; *Baumeister v. Exelon Corp.*, No. 21-6505 (N.D. Ill. Mar. 11, 2022), ECF No. 44).

[2] *See, e.g.*, *Daggett v. Waters Corp.*, No. 23-cv-11527-MJJ (D. Mass. Dec. 21, 2023), ECF No. 38; *Luckett v. Wintrust Fin. Corp.*, 2023 WL 4549620, at *5 (N.D. Ill. July 14, 2023); *Lalonde v. Mass. Mutual Life Ins. Co.*, No. 22-cv-30147-MGM (Feb. 9, 2023), ECF No. 29; *Beldock v. Microsoft Corp.*, No. 22-1082 (W.D. Wash. Dec. 9, 2022), ECF No. 50; *Sigetich v. The Kroger Co.*, No. 21-697 (S.D. Ohio July 22, 2022), ECF No. 47; *Rodriguez v. Hy-Vee, Inc.*, No. 22-72 (S.D. Iowa June 15, 2022), ECF No. 28; *Clark v. Beth Israel Deaconess Med. Ctr.*, No. 22-10068 (D. Mass. May 24, 2022), ECF No. 41; *Ravarino v. Voya Fin., Inc.*, No. 21-1658 (D. Conn. Mar. 8, 2022), ECF No. 28; *Carrigan v. Xerox Corp.*, No. 21-1085 (D. Conn. Nov. 10, 2021), ECF No. 55.

an ERISA case and denying the plaintiffs' motion for reconsideration of that decision, "the proposed amicus brief could provide the Court wi[th] a broader view of the impact of the issues raised in th[e] case"—"an appropriate basis to allow amicus participation." *Baumeister*, ECF No. 44; *see also Daggett*, ECF No. 38 ("The court recognizes that it is within its discretion to accept the amicus brief presented by the Chamber of Commerce of the United States of America, which offers a unique perspective and broader context as to the complex issues in this case.").

While Plaintiff points to scattered decisions in which courts denied leave for *amicus* participation, Plaintiff fails to explain how those courts' exercise of discretion should in any way cabin *this Court's* discretion to permit the filing of *amici*'s brief, as many other courts have done. Moreover, the decisions Plaintiff points to have largely turned on the existence of competent counsel representing defendants. The Chamber respectfully disagrees with this rationale for denying amicus participation—as have a series of courts. *See, e.g.*, *Skokomish Indian Tribe v. Goldmark*, 2013 WL 5720053, at *1 (W.D. Wash. Oct. 21, 2013) (amicus participation appropriate despite the parties' being "well-represented by counsel," because the moving parties' "input would be helpful in considering [the] motions to dismiss"); *Gallo v. Essex Cnty. Sheriff's Dep't*, 2011 WL 1155385, at *6 n.7 (D. Mass. Mar. 24, 2011) (regardless of whether a motion is "ably presented by" defense

counsel, an *amicus* brief can be "quite helpful in putting the immediate controversy in its larger context"); *Am. Steamship Owners Mut. Protect. & Indem. Ass'n, Inc. v. Alcoa Steamship Co.*, 2005 WL 427593, at *11 (S.D.N.Y. Feb. 22, 2005) (allowing *amicus* brief where movants "and their counsel [were] extremely knowledgeable about many of the issues that the Court [would] be asked to consider").

Plaintiff suggests (at 4) that the Federal Rules of Appellate Procedure and Third Circuit use competence of party counsel as a relevant factor, but that is wrong, and Plaintiff completely ignores then-Judge Alito's published opinion explaining why: "Even when a party is very well represented, an amicus may provide important assistance to the court." *Neonatology Assocs., P.A. v. Comm'r of Internal Revenue*, 293 F.3d 128, 132 (3d Cir. 2002) (Alito, J.)[3]; *see also C.P. v. N.J. Jersey Dep't of Educ.*, 2019 WL 6907490, at *2 (D.N.J. Dec. 19, 2019).

As *Neonatology Associates* recognizes, the context and insights *amici* can offer are no less important or persuasive when the parties are adequately represented, as demonstrated by the countless cases in the U.S. Supreme Court, federal appellate courts, and federal district courts that have benefitted from *amicus* participation

[3] Plaintiff contends that Federal Rule of Appellate Procedure 29 "identifies four factors" for deciding whether to permit amicus participation. Opp. 4. But as *Neonatology Associates* discusses, Rule 29 requires only that an *amicus* have an "interest" in the case, and that *amicus* identify why its brief is desirable and relevant. 293 F.3d at 131. *Amici* more than satisfy that requirement here to the extent this Court looks to Rule 29 for guidance.

despite the parties' representation by the nation's top lawyers. Indeed, organizations that frequently support ERISA *plaintiffs* in the Supreme Court and federal appellate courts have filed briefs in a variety of cases pending in federal district court supporting plaintiffs that were more than adequately represented.[4] As those examples demonstrate, the widespread practice of district courts accepting *amicus* briefs does not favor only one side of ERISA disputes.

Moreover, while Plaintiff takes a dim view of discourse in district-court proceedings, he fails to explain why the practical perspectives and context provided by *amici* here are somehow less helpful to district courts than they are to courts of appeals. If anything, this case is particularly appropriate for *amicus* participation at the district-court level, because the proposed brief focuses on the pleading standard *district courts* should apply, and the context *district courts should consider*, when evaluating motions to dismiss in cases challenging stable-value investments in a 401(k) plan line-up. It makes sense that the relevant decisionmakers (*i.e.*, district courts) should have the opportunity to consider *amici*'s arguments, rather than waiting until the case is far removed from this posture on appeal.

[4] *See, e.g.*, *Piercy v. AT&T Inc.*, No. 24-cv-10608-NMG (D. Mass. Jan. 13, 2025), ECF No. 98 (granting leave to file amicus brief in support of ERISA plaintiffs' opposition to motion to dismiss); *Konya v. Lockheed Martin Corp.*, No. 24-cv-750-BAH (D. Md. July 10, 2024), ECF No. 51 (same); *Opiotennione v. Bozzuto Mgmt. Co.*, No. 20-1956 (D. Md. Apr. 26, 2021), ECF No. 80; *Org. for Black Struggle v. Ashcroft*, 20-4184 (W.D. Mo. Oct. 2, 2020), ECF No. 54.

As a judge in the Northern District of Texas opined when granting the Chamber's motion for leave to file in an ERISA class action case, "Speech is a beautiful thing. So beautiful that James Madison, who wrote that a bill of rights was unnecessary, later drafted a bill of rights and urged Congress to pass it." *Locascio*, ECF No. 63. That is particularly true of speech that assists district courts in their careful decisionmaking. Plaintiff is simply wrong that *amici*'s participation at this stage would be "extraordinary." Opp. 2.

2. Plaintiff also claims that SVIA and the Chamber are not impartial. Opp. 12. But this argument, too, was considered and rejected in *Neonatology Associates*: the notion of an *amicus* as a disinterested observer "was once accurate and still appears in certain sources, but this description became outdated long ago." 293 F.3d at 131. As Plaintiff ultimately recognizes (at 12), *amici* are frequently—indeed, typically—"interested in a particular outcome." *Prairie Rivers Network v. Dynegy Midwest Generation, LLC*, 976 F.3d 761, 763 (7th Cir. 2020) (granting the Chamber's motion for leave to file). The Federal Rule of Appellate Procedure governing amicus briefs actually "*requires* that an amicus have an 'interest' in the case," *Neonatology Assocs.*, 293 F.3d at 131, and thus "there is no rule that amici must be totally disinterested." *Funbus Sys., Inc. v. Cal. Public Util. Comm'n*, 801 F.2d 1120, 1125 (9th Cir. 1986); *see also Prairie Rivers*, 976 F.3d at 763 ("[T]he fiction that an *amicus* acts as a neutral information broker, and not an advocate, is

long gone."). To the contrary, "an amicus who makes a strong but responsible presentation in support of a party can truly serve as the court's friend." *Neonatology Assocs.*, 293 F.3d at 131.

Indeed, *amici*'s explanation here of "the impact a potential holding might have on an industry or other group" is a reason to *grant* the motion for leave to file—not deny it. *Id.* at 132. At bottom, the relevant question is not whether an *amicus* supports a particular outcome, but rather whether the brief will "contribute in clear and distinct ways" to the court's analysis. *Prairie Rivers Network*, 976 F.3d at 763. In fulfilling that role, it is "perfectly permissible" for an *amicus* to "take a legal position and present legal arguments in support of it." *Funbus Sys.*, 801 F.2d at 1125. That is exactly what SVIA and the Chamber do here.

3. Next, Plaintiff contends, paradoxically, that *amici*'s brief raises "generic arguments that are not closely tailored to the Complaint," and also that the brief "duplicates …. factual and legal arguments already raised by Defendants in their motion to dismiss." Opp. 2, 10. Plaintiff's dueling theories only show that *amici*'s proposed brief strikes a balance that will be useful to the Court: it "addresses the same issues as the parties" but provides a "unique perspective" that will be "helpful" to the court. *High Country Conservation Advocs. v. U.S. Forest Serv.*, 333 F. Supp. 3d 1107, 1116-1117 (D. Colo. 2018), *vacated and remanded on other grounds*, 951 F.3d 1217 (10th Cir. 2020). In particular, the brief highlights examples from past

cases to contextualize the issues presented here. And the information the brief provides regarding stable-value investments is *unquestionably* relevant and closely tailored to this case—it provides "context" that the Supreme Court has repeatedly instructed lower courts and litigants to grapple with but that Plaintiff ignores. *See, e.g.*, *Hughes*, 595 U.S. at 177.

4. Plaintiff further claims that *amicus* briefs allow the party being supported to make an end run around page limits in a way that is "unfair." Opp. 13. In doing so, Plaintiff invokes the perspective of a single retired Seventh Circuit judge who shared those views decades ago. *See id.* (citing *Ryan v. Commodity Futures Trading Commission*, 125 F.3d 1062 (7th Cir. 1997) (Posner, C.J.)). The robust *amicus* practice at all levels of the federal-court system demonstrates that judges have overwhelmingly declined this invitation to limit debate. Indeed, as reflected by *Prairie Rivers Network*, the Seventh Circuit itself does not share now-retired Judge Posner's hostility to *amicus* participation. 976 F.3d at 763; *e.g.*, *Divane v. Northwestern Univ.*, No. 18-2569 (7th Cir. Apr. 4, 2022), ECF No. 92 (granting Chamber leave over plaintiffs' opposition). And even if it were the case that the Seventh Circuit disfavors *amicus* briefs, this Court is within the Third Circuit, which views *amicus* briefs as capable of providing "important assistance to the court." *Neonatology Assocs.*, 293 F.3d at 131; *see also Locascio*, ECF No. 63 ("Sure, the Seventh Circuit disfavors amicus briefs, as the plaintiff suggests. But this Court is

within the Fifth Circuit, which still views amici as friends.").

5. On the substance, Plaintiff engages very little. Plaintiff primarily complains that the proposed *amicus* brief does not mention the Third Circuit's decades-old decision in *In re Unisys Sav. Plan Litig.*, 74 F.3d 420 (3d Cir. 1996). Opp. 6. This argument ignores that the *amicus* brief highlights binding *Supreme Court* precedent regarding current pleading standards in ERISA cases specifically, such as *Hughes v. Northwestern University*, 595 U.S. 170 (2022) and *Fifth Third Bancorp v. Dudenhoeffer*, 573 U.S. 409, 425 (2014). These decisions post-date *Unisys* and other cases relied on in Plaintiff's opposition.

For example, while Plaintiff cites *Sweda v. University of Pennsylvania*, 923 F.3d 320 (3d Cir. 2019), *five times* in his opposition, the Third Circuit has recognized *Hughes* squarely rejected the central legal proposition articulated in *Sweda*—that the *Twombly*/*Iqbal* federal pleading standard does not apply in ERISA cases. *See Mator v. Wesco Distribution, Inc.*, 102 F.4th 172, 184 (3d Cir. 2024) (citing *Sweda*, 923 F.3d at 326); *Hughes*, 595 U.S. at 177. And *Unisys* predated *Twombly/Iqbal* by more than *two decades*. The proposed *amicus* brief therefore appropriately proceeds under binding Supreme Court precedent and provides helpful context that this Court can use in assessing whether Plaintiff's complaint is consistent with that precedent.

The only other point Plaintiff offers on the substance is to remark in a footnote that courts "have overwhelmingly denied motions to dismiss in cases brought by

Capozzi Adler," apparently suggesting that motions to dismiss are a lost cause in cases they handle. Opp. 5 n.3. But Plaintiff does not even *try* to explain how the allegations here are similar to the allegations in the cases they cite. And Plaintiff's gerrymandered universe ignores the *many* cases they filed that *were* dismissed at the pleading stage (and affirmed on appeal) for the very reasons discussed in *amici*'s brief—*i.e.*, a lack of allegations about process, apples-to-oranges comparisons, and hindsight-based circumstantial allegations not plausibly suggestive of breach.[5]

* * * *

In short, *amici*'s brief is intended to further the dialogue surrounding the proper pleading standard in ERISA cases challenging stable-value products, an issue courts across the country are now working to resolve. This dialogue is a hallmark of the adversary process, not a reason to disallow *amicus* participation. It is in this Court's hands to decide who has the better argument, but it is a conversation worth having—fully and without unduly restricting the points the Court can consider.

[5] *See, e.g.*, *Boyette v. Montefiore Med. Ctr.*, No. 24-1279-CV, 2025 WL 48108 (2d Cir. Jan. 8, 2025); *Singh v. Deloitte LLP*, 123 F.4th 88 (2d Cir. 2024); *Matney v. Barrick Gold of N. Am.*, 80 F.4th 1136 (10th Cir. 2023); *Smith v. CommonSpirit Health*, 37 F.4th 1160 (6th Cir. 2022); *Matousek v. MidAmerican Energy Co.*, 51 F.4th 274 (8th Cir. 2022); *Lard v. Marmon Holdings, Inc.*, 2025 WL 1383269 (N.D. Ill. May 13, 2025); *Baird v. Steel Dynamics, Inc.*, 2024 WL 3983741 (N.D. Ind. Aug. 29, 2024); *Williams v. Centene Corp.*, 2023 WL 2755544 (E.D. Mo. Mar. 31, 2023) (granting motion to dismiss and granting leave to file amicus brief).

Dated: July 14, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, James W. McGarry, certify that a copy of the foregoing reply, filed through the CM/ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on July 14, 2025.

Dated: July 14, 2025

/s/ *James W. McGarry*
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