# EXHIBIT A

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**UNITED STATES DISTRICT COURT**
**CENTRAL DISTRICT OF CALIFORNIA**

DAVID VENTURA, individually and as representative of a class of participants and beneficiaries and on behalf of the Lithia Motors, Inc. 401(K) Plan,

Plaintiff,

v.

LITHIA MOTORS, INC.,

Defendant.

Case No. 2:26-cv-01786-HDV-RAO

**[PROPOSED] AMICUS BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA**

Date: July 16, 2026
Time: 10:00 AM
Place: 5B, Fifth Floor
Judge: Hon. Hernán D. Vera

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## INTEREST OF THE AMICUS CURIAE

The Chamber of Commerce of the United States of America (Chamber) is the world's largest business organization. As the nation's leading advocate for business, the Chamber represents companies and professional organizations of every size, in every industry sector, and from every region of the country.[1] Given the importance of the laws governing fiduciary conduct to its members, many of which maintain or provide services to retirement plans, the Chamber regularly participates as amicus curiae in ERISA cases at all levels of the federal-court system. The Chamber submits this brief to provide context on retirement-plan management and how this case is situated in the broader litigation landscape challenging ERISA fiduciaries' investment decisions.

## INTRODUCTION

This case is one of many in a recent surge of putative class actions challenging the management of employer-sponsored retirement plans. This explosion in litigation is not "a warning that retirees' savings are in jeopardy." Daniel Aronowitz, *Exposing Excessive Fee Litigation Against America's Defined Contribution Plans* 3, Euclid Specialty (Dec. 2020), bit.ly/4aqLdZ7. To the contrary, "in nearly every case, the asset size of many of these plans being sued has increased—often by billions of dollars"—over the last decade. *Id.* Nevertheless, many of these suits cherry-pick particular data points, disregard bedrock principles of plan management and investment strategies, and ignore critical context demonstrating the flawed nature of many plaintiffs' allegations to create an illusion of mismanagement and imprudence.

This case is no different. ERISA plaintiffs have spent more than a decade challenging fiduciaries for offering mutual funds instead of collective investment trusts (CITs) that employ the same investment approach, claiming that the inclusion

[1] No counsel for a party authored this brief in whole or in part. No party, no counsel for a party, and no person other than Amicus, its members, or its counsel made a monetary contribution intended to fund the preparation or submission of this brief.

of mutual funds in a 401(k) plan lineup was a clear sign that fiduciaries were asleep at the wheel and failing in their obligation to ensure cost-conscious plan management. Plaintiff here takes the exact opposite approach, claiming that the decision to offer CITs rather than mutual funds that employ the same investment approach is categorically indicative of imprudence. If nothing else, this case demonstrates definitively what plan sponsors have observed from 401(k) litigation for decades: they will be a target for strike suits no matter what decisions they make.

These per se theories of fiduciary breach find no basis in ERISA's text or structure. The Supreme Court and Ninth Circuit have been clear that allegations of a breach of a fiduciary duty require a context-specific inquiry, which does not lend itself to per se rules. Plaintiff, in contrast, completely ignores the relevant context—the relative pros and cons of the two types of investment styles (which may "implicate difficult tradeoffs"), the relative regulatory oversight mechanisms for the different investment options, and the overall context of fiduciary management, which vests fiduciaries with enormous discretion and flexibility to exercise "reasonable judgment[]" based on the facts and circumstances of the plan and its participants, not to mention the fiduciary's own "experience and expertise." *Hughes v. Nw. Univ.*, 595 U.S. 170, 177 (2022).

Against this backdrop, it is critical that courts do not shy away from the "context-specific inquiry" ERISA requires. *Hughes*, 595 U.S. at 173; *see also Fifth Third Bancorp v. Dudenhoeffer*, 573 U.S. 409, 425 (2014). If these types of conclusory and speculative complaints are sustained, plan participants will be the ones who suffer. Fiduciaries will be pressured to limit investments to a narrow range of options at the expense of providing a diversity of choices with a range of fees, risk levels, and potential performance upsides, as ERISA requires in the case of a self-directed plan,[2] such as the one Plaintiff currently challenges, and most participants

[2] *See* 29 C.F.R. § 2550.404c-1(a)(3) (providing that to meet Section 404(c)'s safe harbor provision, ERISA plan must offer "at least three investment alternatives:

want. Yet as this case shows, even that will not protect them from lawsuits, and the litigation costs will have to come from *somewhere*, likely by diluting the generosity of benefits employers are able to offer. That outcome helps no one—aside from the lawyers litigating these cases.[3]

## ARGUMENT

### I. Hindsight-based attacks on fiduciary decision-making are at odds with ERISA's text and structure.

When Congress enacted ERISA, it "did not *require* employers to establish benefit plans." *Conkright v. Frommert*, 559 U.S. 506, 516 (2010) (emphasis added). Rather, it crafted a statute intended to encourage employers to offer benefit plans while protecting the benefits promised to employees. *Id.* at 516-17. Congress recognized plan sponsors and fiduciaries must make a range of decisions and accommodate "competing considerations." H.R. Rep. No. 96-869(I), at 67 (1980), *reprinted in* 1980 U.S.C.C.A.N. 2918, 2935. Accordingly, Congress chose the flexible "prudent man" standard to define the scope of the duties fiduciaries owe to plans and their participants. 29 U.S.C. § 1104(a); *Fine v. Semet*, 699 F.2d 1091, 1094 (11th Cir. 1983). Neither Congress nor the Department of Labor (DOL) provides a list of required or forbidden investment options, investment strategies, service providers, or compensation structures. And when Congress considered requiring plans to offer at least one index fund, the proposal failed. *See* H.R. 3185, 110th Cong.

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(1) Each of which is diversified; (2) Each of which has materially different risk and return characteristics; (3) Which in the aggregate enable the participant or beneficiary … to achieve a portfolio with aggregate risk and return characteristics at any point within the range normally appropriate for the participant or beneficiary; and (4) Each of which when combined with investments in the other alternatives tends to minimize through diversification the overall risk of a participant's or beneficiary's portfolio").

[3] The Chamber focuses primarily on Plaintiff's novel CIT challenge, but agrees with Defendant that all of Plaintiff's claims should be dismissed. For example, the Chamber has written extensively about Plaintiff's forfeiture challenge, which has recently been in vogue among the ERISA plaintiffs' bar, and refers the Court to the Chamber's prior amicus briefs on that issue in two cases currently pending in the Ninth Circuit. *See, e.g.*, Chamber Amicus Br., *Hutchins v. HP Inc.*, No. 25-826 (9th Cir.) (appeal pending), bit.ly/3PHZytk; *Wright v. JPMorgan Chase & Co.*, No. 25-4235 (9th Cir.) (appeal pending), bit.ly/4vr75Mf.

(2007). Indeed, DOL has declined to provide even *examples* of appropriate investment options, because doing so would "limit … flexibility in plan design." 57 Fed. Reg. 46,906, 46,919 (Oct. 13, 1992).

As courts have recognized, the broad discretion conferred by Congress is the "sine qua non of fiduciary duty." *Pohl v. Nat'l Benefits Consultants, Inc.*, 956 F.2d 126, 129 (7th Cir. 1992). Discretion is critical to the entire ERISA framework, because there virtually never is a single "right" answer to the questions fiduciaries must answer. There are thousands of reasonable investment options with different investment styles and risk levels. Given the vast array of options and the need to tailor solutions to participants and their diverse interests, plan fiduciaries are best positioned to weigh the pros and cons of various choices. If a fiduciary is subjected to constant litigation and Monday-morning quarterbacking over decisions—with the benefit of hindsight and not "based upon information available to the fiduciary at the time of each investment decision," *Anderson v. Intel Corp. Inv. Policy Comm.*, 137 F.4th 1015, 1021 (9th Cir. 2025) (*Intel*) (citation omitted), *certiorari granted*, 2026 WL 120679 (U.S. Jan. 16, 2026)—that would eviscerate the discretion at ERISA's core.

Put simply, "ERISA 'requires prudence, not prescience.'" *Intel*, 137 F.4th at 1021 (citation omitted). Accordingly, courts "evaluate prudence prospectively, based on the methods the fiduciaries employed, rather than retrospectively, based on the results they achieved." *Id.* at 1021. This "context-sensitive" analysis therefore focuses on "the circumstances … prevailing *at the time the fiduciary acts*." *Dudenhoeffer*, 573 U.S. at 425 (emphasis added) (quotation marks omitted).

Given this focus on process, the most natural way to "plead a breach of the duty of prudence" is to "allege[] facts that would directly show that the fiduciaries employed unsound methods in making their investment decisions." *Intel*, 137 F.4th at 1021-22 (collecting examples). To be sure, it is not automatically "fatal" when a

complaint "contains no factual allegations referring *directly* to [the fiduciary's] knowledge, methods, or investigations at the relevant times." *Pension Ben. Guar. Corp. ex rel. St. Vincent Catholic Med. Ctrs. Ret. Plan v. Morgan Stanley Inv. Mgmt. Inc.*, 712 F.3d 705, 718 (2d Cir. 2013) (*PBGC*). Sometimes, "a plaintiff can make circumstantial factual allegations from which the court may reasonably infer from what is alleged that the process was flawed." *Intel*, 137 F.4th at 1022 (quotation marks omitted). But "[w]hen an ERISA plaintiff attempts to do so 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," then at a bare minimum "that plaintiff must provide a sound basis for comparison." *Id.* (quotation marks omitted). In other words, because courts "evaluate prudence prospectively," "it is not enough for a plaintiff simply to allege that the fiduciaries could have obtained better results—whether higher returns, lower risks, or reduced costs—by choosing different investments." *Id.* at 1021. Instead, if "a plaintiff asks a court to infer that a fiduciary used improper methods based on the performance of the investments, … he must compare that performance to funds or investments that are meaningfully similar." *Id.* at 1023. The "same reasoning holds for … allegations that investors in the [defendant's] plans incurred higher fees. As with [] performance allegations, the fact that different kinds of funds with distinct objectives and approaches carried different fees does not by itself demonstrate imprudence." *Id.*; *see also Albert v. Oshkosh Corp.*, 47 F.4th 570, 581 (7th Cir. 2022) ("A complaint cannot simply make a bare allegation that costs are too high, or returns are too low. … Rather, it must provide a sound basis for comparison—a meaningful benchmark." (brackets and quotation marks omitted; ellipses in original)).

The upshot of these cases is clear. To state a plausible imprudent-fiduciary claim, ERISA plaintiffs must either plead direct factual allegations of an imprudent process, or else must have strong circumstantial pleadings that the fiduciary's

investment choices were poor when measured against an array of meaningfully similar comparators. Hindsight-based allegations that ignore the circumstances and considerations around a particular fiduciary choice are insufficient.

## II. There is no per se rule rendering CITs imprudent, and Plaintiff's attempt to cast doubt on CITs' regulatory framework holds no water.

### A. Plaintiff's attempt to create a per se rule and shift the goalposts puts fiduciaries in a Catch-22.

Plaintiff's Complaint puts fiduciaries in an impossible position: Plaintiff seeks to create a bright-line rule automatically rendering CITs imprudent and mutual funds prudent when plaintiffs have spent the past decade challenging fiduciaries for doing precisely that—offering mutual funds over CITs. That request for a *per se* rule flies in the face of ERISA's contextual-based analysis and ignores the safeguards in place to protect CIT investors. CITs, also known as "common trusts," are "institutional investment vehicles" that are "only accessible to certain types of investors, including participants in employer-sponsored retirement plans." T. Rowe Price Participant Insights, Collective Investment Trusts (2021), bit.ly/4uITtMl. These trusts "are managed by banks or trust companies that 'pool' retirement plan assets into a single portfolio that is invested with a specified investment philosophy and strategy" and "may invest in a wide range of active or passive investment vehicles." *Id.* The "primary objective of a collective fund is, through economies of scale, to lower costs with a combination of profit-sharing funds and pensions." *Terraza v. Safeway Inc.*, 241 F. Supp. 3d 1057, 1064 (N.D. Cal. 2017) (citation omitted). CITs do share similarities with mutual funds "in that they are composed of pooled assets invested with a specified philosophy and strategy." *See* T. Rowe Price Participant Insights, *supra*. But CITs, unlike mutual funds, "are not available to individual investors and are not advertised to the public." *Id.* Indeed, the "essential features" of CITs and mutual funds "differ so significantly" that courts have deemed comparisons of mutual funds to collective trusts as "an 'apples-to-oranges' comparison." *See White v.*

*Chevron Corp.*, 2017 WL 2352137, at *11 (N.D. Cal. May 31, 2017).

According to Plaintiff, however, if "publicly available Plan document[s]" do not "disclose[] the total expense ratios or all-in costs" of the CIT fund, as well as "the basis on which these funds were selected over competing CIT or mutual fund alternatives, or any analysis showing that the CIT fees are reasonable in light of the services provided," the fiduciaries have breached their "duty to ensure that the transition does not diminish the transparency of fees and investment information available to participants." Compl. ¶ 71. That is nothing more than an attempt to paint the selection of a CIT fund as automatically imprudent (or permitting an inference of imprudence) without using the phrase "per se." Additionally, "publicly available" information is not the only (or even primary) way for plan fiduciaries—or participants—to obtain information about potential investment options that allows them to evaluate the reasonableness of fees and expenses. As DOL has indicated in guidance to fiduciaries on meeting their fiduciary responsibilities, there is a very simple way to obtain information from investment providers—they can just "ask." DOL, *Meeting Your Fiduciary Responsibilities* 6 (Sept. 2021), https://tinyurl.com/ycx9nbrv. DOL has also promulgated regulations that require fiduciaries to collect information regarding the fees and performance of each investment option offered under the Plan and to provide that information to participants. 29 C.F.R. § 2550.404a-5. In short, CITs are not a black box. CIT investment managers frequently provide information to plan fiduciaries regarding expenses (among other things), and plan administrators are required to provide disclosures, including with respect to performance and fees, to participants.

Moreover, Plaintiff fails to grapple with how per se theories "run[] contrary to the Supreme Court's instruction that the plausibility of allegations of breach of fiduciary duty is a 'context specific' inquiry dependent on the particular circumstances at issue." *Wright v. JPMorgan Chase & Co.*, 2025 WL 1683642, at

*5 (C.D. Cal. June 13, 2025) (quoting *Dudenhoeffer*, 573 U.S. at 421). The Ninth Circuit itself has highlighted that context-specific inquiry when previously rejecting as untenable attempts to create bright-line rules in the ERISA context, because "[t]here are simply too many relevant considerations for a fiduciary." *See Tibble v. Edison Int'l*, 729 F.3d 1110, 1135 (9th Cir. 2013) (rejecting "bright-line approach to prudence" where plaintiff launched "a broadside against retail-class mutual funds" and recognizing Seventh Circuit agreement), *vacated on other grounds*, 135 S. Ct. 1823 (2015).

This *particular* per se theory is especially chafing given the history of ERISA plaintiffs' 401(k) line-up challenges over the past decade. Courts have recognized that "collective trusts … are … common investment instruments with the potential to outperform mutual funds" given their lower investment-management fees due to the economies of scale for these investment vehicles. *See Moitoso v. FMR LLC*, 451 F. Supp. 3d 189, 212 (D. Mass. 2020) (collecting cases). And for more than a decade, plaintiffs have been targeting fiduciaries for deigning to offer mutual funds within their 401(k) plan line-up rather than offering CIT versions of the same investment. *See, e.g.*, *Davis v. Salesforce.com, Inc.*, 2020 WL 5893405, at *6 (N.D. Cal. Oct. 5, 2020) (addressing "an imprudence claim predicated on a comparison of mutual funds with collective trusts"); *Tobias v. NVIDIA Corp.*, 2021 WL 4148706, at *9 (N.D. Cal. Sept. 13, 2021) ("Plaintiffs allege that Committee Defendants failed to utilize collective trusts when such options were available."); *White*, 2017 WL 2352137, at *12 (plaintiffs arguing "the fiduciaries imprudently offered mutual funds when the Plan could have used less expensive institutional products, such as collective trusts or separate accounts"); *Miguel v. Salesforce.com, Inc.*, 2024 WL 1222092, at *1 (N.D. Cal. Mar. 20, 2024) (plaintiff challenging defendants for "failing to substitute the Fidelity mutual funds with Fidelity collective investment trusts"); *Kendall v. Pharm. Prod. Dev., LLC*, 2021 WL 1231415, at *8 (E.D.N.C. Mar. 31, 2021);

*Moitoso*, 451 F. Supp. 3d at 210; *Ferguson v. Ruane Cunniff & Goldfarb Inc.*, 2019 WL 4466714, at *10 (S.D.N.Y. Sept. 18, 2019); *Larson v. Allina Health Sys.*, 350 F. Supp. 3d 780, 795 (D. Minn. 2018); *Main v. Am. Airlines Inc.*, 248 F. Supp. 3d 786, 794 (N.D. Tex. 2017); *Moreno v. Deutsche Bank Ams. Holding Corp.*, 2016 WL 5957307 (S.D.N.Y. Oct. 13, 2016).

Plaintiff here is claiming *exactly the opposite*—that the mere fact that fiduciaries have chosen to include CITs instead of mutual funds (as ERISA plaintiffs have for a decade claimed is the only prudent option) is a clear sign that fiduciaries must have been asleep at the wheel. *See* Compl. ¶ 71. It is no wonder Lithia is exasperated. Importantly, the point is not that *this plaintiff* is wrong and plaintiffs for the last decade have been right—that CITs are categorically prudent and mutual funds are a clear sign of fiduciary misfeasance. Nor is the point that *this plaintiff* is right and ERISA plaintiffs for the last decade have been wrong. Instead, the point is precisely what the Supreme Court has acknowledged: "At times, the circumstances facing an ERISA fiduciary will implicate difficult tradeoffs, and courts must give due regard to the range of reasonable judgments a fiduciary may make based on her experience and expertise." *Hughes*, 595 U.S. at 177. CITs and mutual funds are *both* reasonable options for plan fiduciaries to select, but they do offer different costs and benefits. Given ERISA's process-based inquiry, the mere fact that a fiduciary chose one investment vehicle over the other says nothing about whether the fiduciary had a sound process in place to make that choice.

As this case demonstrates perhaps better than any other, ERISA fiduciaries making discretionary decisions are at risk of being sued seemingly no matter what decisions they make. The plaintiffs in the myriad cases *supra* would have had no objection to the fiduciaries' decision to offer CITs in this case, yet Plaintiff has targeted Lithia's fiduciaries for offering exactly what others have lauded, giving new meaning to the phrase "cursed-if-you-do, cursed-if-you-don't." This dynamic has

made it incredibly difficult for fiduciaries to do their jobs—and, as this case reveals, it has made it virtually impossible for fiduciaries to avoid being sued, no matter how careful their process and how reasonable their decisions.

### B. Fearmongering as to the regulation of CITs does not plausibly suggest a fiduciary violated ERISA.

Even setting aside the Catch-22 Plaintiff seeks to place all fiduciaries in, Plaintiff's grounds for creating a new bright-line rule—that CITs are "structurally opaque" and subject to a different regulatory framework compared to mutual funds—ignores the rigorous scrutiny state governments give to CITs and the reasons underlying the different regulatory regimes.

Plaintiff faults CITs for not being regulated by the SEC like mutual funds, Compl. ¶ 67, but the fact that CITs do not fall within the SEC's purview does not mean CITs are not regulated. "CITs are primarily regulated by the Office of the Comptroller of the Currency or state banking regulators." Investor.gov, *Collective Investment Trust (CIT)*, U.S. SEC, bit.ly/3Qmz4h7 (last visited June 10, 2026). Indeed, Plaintiff recognizes as much. Compl. ¶ 67 (acknowledging that CITs are "governed by the Office of the Comptroller of the Currency … or state banking regulators"). More specifically, a "CIT is subject to regulation and oversight under the banking law governing its trustee, such as the National Bank Act and the rules and regulations of the Office of the Comptroller of the Currency (the 'OCC') for national banks and federal savings associations, a state's banking law for banks and trust companies established under state law, and general common law principles of fiduciary duties." Great Gray Trust Co., *Governance of Collective Investment Trusts: Benefits To Plan Investors* 2 (2024), bit.ly/4v6oTwx (*Governance of CITs*). And even though "CITs sponsored by state-chartered institutions are not directly subject to OCC regulation, many states apply the OCC's rules either by statute, rule, other guidance or as best practices in examining state bank collective trust activities."

Coalition of Collective Investment Trusts, *Collective Investment Trusts* 10 (2015), bit.ly/4el5qC1; *Governance of CITS*, *supra*, at 6 (noting that "non-OCC regulated banks and trust companies generally use [the OCC's Handbook] as a guide to best practices in managing a CIT"). And adding to this web of regulations is ERISA itself: "because CITs by definition serve as investment vehicles exclusively for retirement assets …, they are subject to the fiduciary responsibility and prohibited transaction rules" under ERISA. *Governance of CITs*, *supra*, at 2.

The extensive regulatory regime governing CITs ensures that there is no regulatory gap as Plaintiff tries to suggest (Compl. ¶ 79). For instance, Plaintiff complains that "CITs are not required to maintain independent boards of directors." Compl. ¶ 80. CITs, however, are far from ungoverned and instead "are governed by trustees that must adhere to the regulatory regime founded on fiduciary principles arising under ERISA, state or federal banking law, and common law." Great Gray Trust Co., *CITs vs. Mutual Funds: Key Differences Explained* (Sept. 13, 2024), bit.ly/3RCV2wP.

Plaintiff largely hangs his complaint on participants not having access to the same types of disclosures they would have access to for mutual funds. *See, e.g.*, Compl. ¶¶ 74-76. But Plaintiff overlooks how "CIT managers typically produce fact sheets, provide standardized performance information and expense disclosures, and distribute investment commentary in the same format as mutual funds." John Hancock, *What is a CIT?* (Apr. 6, 2026), bit.ly/49Cr2XW. More specifically, "[m]ost CIT providers also prepare a fund offering document … that further describes, among other things, the fund's material terms, investment objective and strategy, policies, fees/expenses and risk characteristics." Coalition of Collective Investment Trusts, *CIT Myths and Facts* 2 (May 2022), bit.ly/4vwm8nX. Notably, "[t]hese documents are designed to provide similar information to that which an investor would find in a mutual fund prospectus." *Id.* That those documents are not

posted on a website like mutual fund disclosures does not mean they do not exist.

Moreover, the driving force between the different regulatory systems governing CITs and mutual funds is the difference in eligible investors. Unlike CITs, "[m]utual fund shares are permitted to be publicly offered to both institutional and retail investors, including possibly unsophisticated individuals." *Governance of CITs*, *supra*, at 3. Because of that difference in sophistication, the SEC imposes certain requirements to provide greater protection. *Id.* (discussing SEC requirement that mutual funds "sell shares only pursuant to an effective, up-to-date … prospectus"). In contrast, "CITs cannot be sold directly to the general public or any institution. They can only be sold to qualified retirement plans managed by persons who are subject to various fiduciary duties." *Id.* at 3-4. Precisely because CITs are "available exclusively to qualified retirement plans that are institutional investors (or represented by sophisticated persons), there are no specific disclosure, distribution or registration requirements," but "general fiduciary considerations that require accurate disclosures to investors and no misleading statements" and "streamlined disclosure requirements under ERISA" remain. *Id.* at 4.

To nevertheless claim that Lithia's fiduciaries acted imprudently, Plaintiff characterizes CITs as a black box that blinds fiduciaries too. *See* Compl. ¶ 81. To the extent Plaintiff claims fiduciaries cannot "rely on public market forces, standardized retail disclosures, or SEC oversight to evaluate CITs," Compl. ¶¶ 79, 81, these are not the sole ways for fiduciaries to monitor potential investments, as noted previously. *See supra* p. 7-8. "Since 2011, the Department of Labor has mandated that certain plan administrators provide uniform performance, fee and other disclosures to plan participants regarding all investment options offered in 401(k) retirement plans," which would include CITs. *Governance of CITs*, *supra*, at 4. To provide those disclosures to participants, plainly plan fiduciaries have to obtain that information from CIT providers. And indeed, "many CITs issue quarterly fact

sheets and fund data is readily available." *Id.*

Put simply, CITs are not the Wild West—they are subject to overlapping layers of protection that exist specifically to protect plan participants, all of which Plaintiff glosses over. But this Court should not gloss over it because the regulatory landscape is precisely the type of "context" that the Supreme Court has repeatedly reminded courts that they should consider when evaluating the plausibility of fiduciary-breach claims. *Hughes*, 595 U.S. at 172, 173; *Dudenhoeffer*, 573 U.S. at 425. Completely ignoring the complex and interlocking protections that exist through heavy state regulation does not plausibly suggest plan fiduciaries were asleep at the wheel simply because they chose an investment that Plaintiff does not prefer. If Plaintiff's theory were the rule, then every fiduciary of a plan investing in CITs could be expected to be haled into court—and in the United States, CITs alone accounted for more than 50% of industry assets in 2025, Mot. to Dismiss 16—simply for making the extraordinarily popular decision to offer this low-cost method of investing to plan participants that ERISA plaintiffs' lawyers have for years posited is the *only* prudent option. That is not how the statute works.

## CONCLUSION

For the foregoing reasons, this Court should dismiss the Class Action Complaint.

Respectfully submitted,

Dated: June 10, 2026

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## CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for amicus the Chamber of Commerce of the United States of America, certifies that this brief contains 4,200 words, which complies with the word limit of Local Rule 11-6.1.

Dated: June 10, 2026

/s/ *Jaime A. Santos*
Jaime A. Santos (SBN 284198)

## CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Central District of California by using the CM/ECF system on June 10, 2026. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: June 10, 2026

/s/ *Jaime A. Santos*
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