EXHIBIT 1

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

JOSEPH PAONE and MICHELLE SEELY, individually and on behalf of all others similarly situated, Plaintiffs, v. WASTE CONNECTIONS, INC., THE BOARD OF DIRECTORS OF WASTE CONNECTIONS, INC., WASTE CONNECTIONS, INC. INVESTMENT COMMITTEE, and JOHN DOES 1-20, Defendants.	)	Case No. 4:26-cv-02063

[PROPOSED] AMICUS BRIEF OF THE
CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND
THE STABLE VALUE INVESTMENT ASSOCIATION
<u>IN SUPPORT OF DISMISSAL</u>

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INTEREST OF AMICI CURIAE[1]

The Chamber of Commerce of the United States of America 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. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files amicus curiae briefs in cases, like this one, that raise issues of concern to the nation's business community.

The Stable Value Investment Association ("SVIA") is a non-profit organization dedicated to educating employers, employees, government officials, and the public about the importance of saving for retirement and the contribution stable-value ("SV") investment products can make toward financial security. SVIA's membership represents all segments of the stable-value investment community, including public and private plan sponsors, insurance companies, banks, investment managers, and consultants. SVIA members collectively manage more than $800 billion in SV products offered in more than 244,000 defined contribution plans. SVIA's research and data give it the perspective to advocate for a sound framework for evaluating claims concerning the inclusion of SV investments as part of a diversified 401(k) plan lineup.

The Chamber and SVIA submit this brief to provide crucial context about retirement-plan management, the wealth and diversity of SV options for retirement-plan lineups, and how this case is situated in the broader litigation landscape challenging ERISA fiduciaries' investment decisions.

[1] No counsel for any party authored this brief in whole or in part, and no entity or person, aside from amicus curiae, its members, or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

INTRODUCTION

This case is part of an ongoing surge in putative class actions challenging the management of employer-sponsored retirement plans. As the now-leader of the Employee Benefits Security Administration has explained, 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), https://tinyurl.com/469xhac8 ("*Excessive Fee Litigation*"). 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 data points, disregard bedrock principles of plan management and investment strategies, and ignore critical context regarding investment management and plan administration to create an illusion of mismanagement and imprudence.

The complaints typically follow a familiar playbook, often loaded with inferences unsupported by the plaintiffs' conclusory factual allegations. Using the benefit of hindsight, these lawsuits challenge plan fiduciaries' decisions about the investment options made available to retirement plan participants by focusing on one or two factors about investment products or services—typically fees or performance—out of the myriad factors plan fiduciaries are required to consider. And then, offering a few cherry-picked comparators, the plaintiffs allege that plan fiduciaries *must* have had a flawed decision-making process because they did not choose one of the plaintiffs' preferred alternatives.

This case is no different. Like many waves of ERISA class actions before it, this case is one of a spate of recent lawsuits filed in unrelenting succession, many by the same plaintiffs' firm.[2]

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[2] *See also, e.g.*, *Jones v. Comfort Systems USA, Inc.*, 4:26-cv-00849 (S.D. Tex. February 3, 2026); *Fitch v. Centra Health Inc.*, 6:26-cv-00001 (W.D. Va. filed January 2, 2026)*; Batten v. Ricoh USA, Inc.*, No. 2:25-cv-04658 (E.D. Pa. filed Aug. 13, 2025); *Muldoon v. Penn State Health*, No. 1:25-

This wave of lawsuits targets a highly specialized form of investments (SV investments) but ignores critical context about these investments' unique characteristics—instead opting for simplistic (and hindsight-based) allegations of underperformance. These performance-focused allegations are misguided as a general matter given ERISA's focus on process rather than outcomes, but particularly so with respect to SV investments, which intentionally focus on asset *preservation*, not aggressive growth. SV investments offer bond-like returns together with principal preservation and liquidity for participants and can be an extremely useful component of a balanced and diversified portfolio, particularly for participants in or near retirement. About 75% of all retirement plans feature SV investments.[3] SV products vary considerably across key characteristics, including rates of return, fee structure, issuer diversification, asset transparency and ownership, and exit provisions—all of which make a particular SV investment more or less attractive depending on the circumstances and needs of a plan and its participants. Ignoring this context, the Second Amended Class Action Complaint ("Second Amended Complaint" or "SAC"), like the prior complaints, focuses entirely on one feature of the guaranteed investment contract (the "Voya GIC") issued by Voya Retirement Insurance and Annuity Company ("Voya") and held in the Plan that it calls imprudent. The Second Amended Complaint describes the Voya GIC's crediting rate over a timeframe characterized by particularly volatile markets, including a uniquely high-interest-rate environment and the COVID pandemic. And it juxtaposes that crediting rate with those of a hodgepodge of other SV investments drawn from plans of vastly different sizes,

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cv-01181 (E.D. Pa. filed June 27, 2025); *Johnston v. Intermountain Healthcare*, 1:25-cv-00073 (D. Utah filed June 3, 2025); *Reven v. Cigna Grp. 401(k) Plan Ret. Plan Comm.*, No. 25-cv-02465 (E.D. Pa. filed May 14, 2025); *Gonzalez v. JP Morgan Chase Bank, NA*, 2:25-cv-01889 (D.N.J. filed March 14, 2025); *Carter v. Sentara Healthcare Fiduciary Comm.*, No. 25-cv-00016 (E.D. Va. filed Jan. 8, 2025).

[3] SVIA, *Stable Value at a Glance* (Aug. 6, 2026), https://tinyurl.com/2693p6xc ("*Stable Value at a Glance*").

without regard to the comparator investments' other characteristics.

Plaintiffs' approach cannot be sufficient to plead a plausible fiduciary-breach claim. Congress designed ERISA to give fiduciaries flexibility to weigh *all* the relevant circumstances in choosing a plan lineup. Accordingly, the Supreme Court recognizes that "the circumstances facing an ERISA fiduciary will implicate difficult tradeoffs," so courts must "give due regard to the range of reasonable judgments a fiduciary may make based on her experience and expertise." *Mator v. Wesco Distribution, Inc.*, 102 F.4th 172, 184 (3d Cir. 2024) (quoting *Hughes v. Nw. Univ.*, 595 U.S. 170, 177 (2022)).

Under this standard, the Second Amended Complaint's acontextual, hindsight-driven, and exclusive focus on the Voya GIC's purported crediting rate over a particularly volatile market timeframe is *especially* inappropriate. The Second Amended Complaint ignores the basic tenets of SV investments—they are meant to prioritize stability and asset preservation together with positive, low-volatility returns over a long-term investment horizon, not short-term growth at all cost. Whether a plan should offer an SV investment that has a slightly lower crediting rate over another SV investment with materially distinct features is precisely one of the "difficult tradeoffs" fiduciaries are meant to weigh in their discretion. *Hughes*, 595 U.S. at 177.

Rigorously policing meritless allegations like these at the pleading stage matters. The ongoing tidal wave of litigation has left fiduciaries exposed to potential liability for virtually any choice they make, driving up insurance rates, litigation costs, and administrative burdens, and frustrating the flexibility and discretion ERISA is supposed to promote. This Court should dismiss the Second Amended Complaint.

ARGUMENT

I. Hindsight-based attacks on fiduciary decision-making are at odds with ERISA's process-based approach.

A. ERISA encourages the creation of benefit plans by affording flexibility and discretion to plan sponsors and fiduciaries.

When Congress enacted ERISA, it "did not require employers to establish benefit plans." *Conkright v. Frommert*, 559 U.S. 506, 516 (2010). Rather, it crafted a statute intended to encourage employers to offer plans while protecting the benefits promised to employees. *Id.* at 516-17. Congress knew that if it adopted a system that was too "complex," then "administrative costs, or litigation expenses, [would] unduly discourage employers from offering [ERISA] plans in the first place." *Id.* at 517 (citation omitted). "ERISA therefore represents a careful balancing between ensuring fair and prompt enforcement of rights under a plan and the encouragement of the creation of such plans." *Mator*, 102 F.4th at 183 (quotation marks omitted).

Congress designed a scheme that affords plan sponsors and fiduciaries considerable flexibility—"greater flexibility, in the making of investment decisions…, than might have been provided under pre-ERISA common and statutory law in many jurisdictions." U.S. Dep't of Labor, Op. No. 81-12A, 1981 WL 17733, at *1 (Jan. 15, 1981). Congress viewed this flexibility as "essential to achieve the basic objectives of private pension plans because of the variety of factors which structure and mold the plans to individual and collective needs of different workers, industries, and locations." S. Rep. No. 92-634, at 21 (1972). Given the need for flexibility regarding the breadth of fiduciary decisions to be made in the face of market uncertainty, Congress chose the "prudent man" standard to assess compliance with the duties ERISA fiduciaries owe. 29 U.S.C. § 1104(a); *Fine v. Semet*, 699 F.2d 1091, 1094 (11th Cir. 1983).

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, particularly 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. For example, recent statistics show that over 244,000 plans (about 75% of all plans) offered SV investments, into which employees have invested over $800 billion in retirement savings.[4]

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—often with assistance from investment professionals. If a fiduciary is subjected to constant Monday-morning quarterbacking over his decisions—not based on "the circumstances as they reasonably appear[ed] to him at the time when he does the act" but instead on hindsight, *Smith v. CommonSpirit Health*, 37 F.4th 1160, 1164 (6th Cir. 2022) (quoting Restatement (Second) of Trusts § 174 cmt. b (1959))—that would eviscerate the discretion at ERISA's core.

B. ERISA does not police investment *outcomes*, but instead simply requires a prudent fiduciary *process*.

Because Congress has afforded fiduciaries significant discretion, "courts look to '*process* rather than *results*'" when evaluating an imprudent-fiduciary claim "and inquire 'whether a fiduciary employed the appropriate methods to investigate and determine the merits of a particular investment.'" *Cho v. Prudential Ins.*, 2021 WL 4438186, at *7 (D.N.J. Sept. 27, 2021) (emphasis added) (citation omitted); *see also Matousek v. MidAmerican Energy Co.*, 51 F.4th 274, 278 (8th Cir. 2022). This "context-sensitive" analysis therefore focuses on "the circumstances ... prevailing *at the time the fiduciary acts*." *Fifth Third Bancorp v. Dudenhoeffer*, 573 U.S. 409, 425 (2014) (emphasis added) (quotation marks omitted).

[4] SVIA, *What Is Stable Value?* (June 9, 2025), https://tinyurl.com/y3jtu7wb; SVIA, *Stable Value at a Glance*.

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." *Anderson v. Intel Corp. Inv. Pol'y Comm.*, 137 F.4th 1015, 1021-1022 (9th Cir. 2025), *certiorari granted*, 2026 WL 120679 (U.S. Jan. 16, 2026) ("*Intel*") (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." *PBGC ex rel. St. Vincent Cath. Med. Centers 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 where a plaintiff relies on circumstantial allegations of poor investment performance to support an inference of imprudence, courts have recognized that bare assertions that 'costs are too high, or returns are too low" are insufficient. *Matousek*, 51 F.4th at 278 (citation omitted). As DOL recently explained in a proposed rulemaking, performance is only *one factor* that fiduciaries consider when evaluating an investment option in a plan line-up, and even as to that factor, "a fiduciary's consideration of … performance should not focus solely on expected returns" but rather also "take into account the risks that investors are exposed to," the relevant "time horizon" of participants' likely investment needs, and more. *Fiduciary Duties in Selecting Designated Investment Alternatives*, 91 Fed. Reg. 16088, 16094-16095, 16096 (Mar. 31, 2026).

Reciting what makes for a viable claim clarifies what does not. For one thing, "plaintiffs cannot rely, after the fact, on" disappointing plan performance, shorn of context. *PBGC*, 712 F.3d at 718 (quotation marks omitted). "Nor is it necessarily sufficient to show that better investment opportunities were available at the time of the relevant decisions." *Id.*; *see also Davis v.*

Washington Univ. in St. Louis, 960 F.3d 478, 484 (8th Cir. 2020) ("[A] complaint cannot simply make a bare allegation that costs are too high, or returns are too low."). Again, 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." *Intel*, 137 F.4th at 1023; *see also Meiners v. Wells Fargo & Co.*, 898 F.3d 820, 822 (8th Cir. 2018). These principles reflect the basic requirements of plausibility pleading: acontextual allegations of underperformance, untethered to any showing that the comparators relied upon are actually comparable in their material characteristics, cannot support a reasonable inference that a fiduciary's process was imprudent. *Eibensteiner v. EssilorLuxottica USA Inc.*, 2026 WL 1140895, at *3 (N.D. Tex. Apr. 27, 2026) (noting that "the Fifth Circuit has yet to define exactly" what constitutes a sufficient basis for comparison and dismissing complaint where "allegations regarding the comparators' characteristics remain largely high-level and are wanting for substantial factual detail concerning their underlying structure, contractual terms, or specific risk exposures."). And while the Fifth Circuit previously suggested in an unpublished opinion that "the pleading is sufficient if any one of [the alternative statements offered] is sufficient," *Perkins v. United Surgical Partners Int'l*, 2024 WL 1574342, at *5 n.9 (citation and emphasis omitted), the Supreme Court has since reiterated that "a plaintiff must plead facts that … rule out 'obvious alternative explanation[s]' for the defendant's conduct." *Hikma Pharms. USA Inc. v. Amarin Pharma, Inc.*, 146 S. Ct. 1391, 1399 (2026) (citation omitted).

Courts have applied this standard across a variety of ERISA cases. For example, courts have made short work of allegations that focus on a single metric, like a fund's performance, without any contextual analysis for why the fund might reasonably have been included among a plan's offerings.[5] Courts have also consistently held that inapt comparisons among materially different products cannot support a plausible claim of imprudence,[6] even when the comparators can be lumped into the same broad category and are offered by the same provider.[7]

The upshot of these cases is clear. To state a plausible imprudent-fiduciary claim, ERISA plaintiffs must either plead *direct* factual allegations of process, or they must *offer circumstantial* allegations that, in context, plausibly support an inference that the fiduciary's decision-making process was flawed—which requires more than bare assertions of underperformance measured against inapt or unexplained comparators. Hindsight-based allegations that ignore the circumstances and considerations around a particular fiduciary choice are insufficient.

II. Attacking the use of a particular SV product in a vacuum based on hindsight differences in crediting rates is insufficient to state a claim.

As case law repeatedly stresses, courts must consider context when determining whether imprudent-fiduciary allegations pass muster under Rule 12(b)(6). *Dudenhoeffer*, 573 U.S. at 425; *Hughes*, 595 U.S. at 177. Situating Plaintiffs' allegations in the larger context of SV investments leads to a clear conclusion: their allegations fall far short of the plausibility standard.

SV investments are "unique investment product[s]" that "provide bond-like returns" while preserving principal, and thus "provide[] to investors an attractive risk/return profile."[8] They are quite popular: as of 2024, "approximately 3 out of 4" defined-contribution plans offer some stable-

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[5] *E.g.*, *Anderson v. Advance Publ'ns, Inc.*, 2023 WL 3976411, at *3 (S.D.N.Y. June 13, 2023) (collecting cases); *Smith*, 37 F.4th at 1166 (rejecting notion that "a showing of imprudence [could] come down to simply pointing to a fund with better performance").

[6] *E.g.*, *Intel*, 137 F.4th at 1034 ("putative comparators were not truly comparable because they had different aims, different risks, and different potential rewards" (quotation marks omitted)).

[7] *E.g.*, *Davis v. Salesforce.com, Inc.*, 2022 WL 1055557, at *2 n.1 (9th Cir. Apr. 8, 2022) (affirming district court's rejection of plaintiff's comparison between passively and actively managed JPMorgan target-date funds or "TDFs").

[8] SVIA, *Who Invests in Stable Value and Why?* (July 7, 2021), https://tinyurl.com/55yy9zxa; *Stable Value at a Glance*.

value investment.[9] "Millions of plan participants" choose to invest in SV investments "to achieve their desired risk tolerance" in growing their retirement savings,[10] and they have invested well over $800 billion in SV investments in more than 244,000 plans, *see* pp. 1, 6, *supra*.

Because SV investments "provide an attractive principal preservation investment, insulating plan participants from day-to-day market volatility while providing them with relatively steady returns," they are "ideally suited for plan participants seeking to protect their retirement savings and provide a source of income during retirement." *Who Invests in Stable Value and Why?* Unsurprisingly, then, "data shows that stable value investors are predominantly represented by older plan participants, as those 60 years and older own approximately half of stable value assets and those who are 50 years and older own approximately 85% of stable value assets." *Id.* Yet there are also "plan participants seeking to be more aggressive with their retirement investing" who invest in SV products as part of their overall retirement portfolio "since stable value has a low correlation to more volatile, higher returning investments like equities." *Id.* So "younger investors are also discovering stable value's benefits and critical role in their retirement portfolios." *Id.*

But SV products are not all the same; they are as diverse as the employees who invest in them. Roughly speaking, SV products fall into three large buckets—(1) individually managed accounts, (2) pooled SV investments, and (3) insurance-company general and separate accounts—although there are many nuances and subdivisions within these broad categories. *See Stable Value Market Segments*. The first two categories are often referred to as "synthetic" SV products.

Each category has a distinctive structure that may cause them to be better suited for a particular plan and its participants. Individually managed accounts are "[t]ypically offered by an

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[9] *Stable Value at a Glance*.
[10] SVIA, *Stable Value Market Segments* (Dec. 31, 2022), https://tinyurl.com/5xj79ksu.

investment manager and managed for a specific plan's participants." *Stable Value Market Segments*. These accounts allow for significant customization but tend only to be available for plans with substantial assets. Pooled SV investments, in turn, are "[t]ypically offered by an investment manager and combine[] the assets of unaffiliated plans into one fund." *Id*. These funds are generally used by plans that do not meet the minimum size for an individually managed account or do not require plan-specific customization. Finally, as their name suggests, insurance-company SV investments are usually "[o]ffered and guaranteed by a single insurance company," and are either "backed by [the insurance company's] general account" (general-account SV products) or are offered and guaranteed "from a separate account" (separate-account SV products). *Id*.

Even *within* each category, the options vary widely with respect to key characteristics. Start with the different kinds of "crediting rates" these different categories of SV products tend to provide investors. For some SV investments, like certain general-account products, the crediting rates are "[d]eclared in advance" and "guaranteed regardless of the performance of the underlying assets." *Stable Value Market Segments*. By contrast, individually managed accounts and pooled investments offer crediting rates that are determined by a formula and vary incrementally (for example, month by month) "[b]ased on the actual performance of the underlying assets." *Id*. Hence, as is also true of mortgage interest rates, the *timing* of when an investment is made into an SV product is critical, as it can determine (perhaps permanently) the specific returns obtained.

Fee structures vary, too: individually managed accounts and pooled funds tend to use set, "disclosed" fees, whereas general-account products (and some separate-account products) use a "[s]pread," under which "compensation is the difference between actual investment earnings and [the] declared rate[]" for the fund, a figure that often "is not required to be disclosed." *Stable Value Market Segments*. For these types of SV products, the issuing insurance company bears all investment risk for offering the promised returns regardless of market conditions. As a result, the insurer retains any surplus return above the crediting rate as compensation and absorbs any losses if actual investment performance falls short.

Different SV investments have different exit provisions as well—some (like many individually managed accounts) can provide for "[t]ermination at market value at any time" (which could result in a loss of principal) or termination at contract value over a period of 12 to 24 months; others (like many general- and separate-account products) "require structured payout over multiple years" to receive a total plan withdrawal at book value, enabling the issuer to invest in longer-term underlying investments, which can make higher crediting rates possible than if plan sponsors could exit at will. *Id*. These types of termination provisions limit a plan's flexibility to shift from one SV product to another while preserving principal.

This variation means that the choice of a particular SV product depends on context and investor-specific considerations, as each variation is an intentional trade-off made for specific strategic reasons. If a strictly guaranteed rate of return seems more suitable for a plan and its participants, a general-account product might be attractive. If maximum liquidity is a greater virtue, depending on the characteristics of the plan and the experienced judgment of fiduciaries, an individually managed account might rank higher on the list. If maximum transparency into assets and fee structures is a higher priority, fiduciaries might go with an individually managed or pooled fund. Of course, as already discussed, fiduciaries must balance *all* these considerations (and more) to determine what blend of return level, compensation structure, asset transparency, and liquidity makes sense for their plan. Then they must consider how an SV option balances with the rest of the plan's investment menu. And that does not even take into account the characteristics (including reputation and history) of a particular insurer or financial-services company offering the SV investment. Despite these variations, all SV products are designed to provide a safe place for retirement savings and competitive rates of return over an investment cycle.

As even this high-level introduction to SV products makes clear, the acontextual, broad-brush allegations in the Second Amended Complaint are wholly insufficient to establish that the Voya GIC was imprudently chosen. Plaintiffs concede they cannot allege any facts that directly support their fiduciary-breach claims—they aver that they have no knowledge of Defendants' decision-making process at all. SAC ¶ 71. Plaintiffs' only hope is to plead strong "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). They have failed to do so.

To start, Plaintiffs' description of the Voya GIC is cursory. *See Jacobs v. Hackensack Meridian Health, Inc.*, 2026 WL 710229, at *13 (D.N.J. Mar. 13, 2026) (criticizing "dearth of information in the Complaint" about challenged SV investment). The Second Amended Complaint alleges that the Voya GIC is a general account product, SAC ¶ 113, without offering any significant details about it. Nor does the Second Amended Complaint's inclusion of purported comparators move the needle. Plaintiffs have not even tried to allege that the various specific material characteristics of these other SV investments (*e.g.*, product structure, timing, asset transparency and ownership, liquidity, and credit risk) are at all comparable to the Voya GIC.

Simply labeling funds as "comparable" or "a peer" does not establish that those funds are sufficiently similar to render any comparison reflective of a flawed fiduciary process. *See Intel*, 137 F.4th at 1023; *Meiners*, 898 F.3d at 824 ("An ERISA plaintiff must offer more than 'labels and conclusions' about the fees before a complaint states a claim." (citation omitted)); *see also* pp. 7-8, *supra*. Instead, plaintiffs must "provide specific plan comparators … and plausibly allege that the services purchased"—or more broadly, the challenged plan and comparators' characteristics—

"were sufficiently similar to render the comparisons valid." *Mator*, 102 F.4th at 188. The Second Amended Complaint fails to do so here, offering no basis to conclude that its purported comparators share the material characteristics necessary to make any performance comparison with the Voya GIC meaningful. *See Eibensteiner*, 2026 WL 1140895, at *4 (dismissing SV claim where "the allegations do not establish that the comparator funds are sufficiently similar to the [challenged fund] to support a meaningful comparison" because "imprudence cannot be inferred based solely on allegations identifying the existence of . . . better performing alternative funds.").

Indeed, Plaintiffs merely cherry-pick this set of purported comparators, baldly allege they are "substantially identical" to the Voya GIC, and point to a series of charts claiming that these other funds had slightly higher crediting rates. SAC ¶¶ 108, 117-147, 151. But the Second Amended Complaint's deficiencies run even deeper. Beyond the five named Comparator Funds, the Second Amended Complaint supplements its charts with different sets of additional GICs each year—citing GICs from Lincoln Financial Group, Brighthouse Life Insurance Company, Massachusetts Mutual Life Insurance Company, National Ohio Financial Services, and others in rotating fashion without any consistent basis for comparison. *E.g.*, SAC ¶¶ 134, 137, 140, 143, 146. These comparators include GICs held in plans with as few as 90 participants and as many as 34,554 (as compared to the Waste Connections Plan's approximately 9,300 to 11,600 participants), offered by a patchwork of different insurers. The Second Amended Complaint offers no explanation for why different comparators conspicuously appear and disappear from year to year, nor any allegation that these rotating GICs share the same material characteristics as the Voya GIC. This is precisely the same approach taken by the plaintiffs in a similar case that was dismissed with prejudice, *Johnston v. Intermountain Healthcare, Inc.*, 2026 WL 1998490, at *6 (D. Utah July 10, 2026). There, as here, "[p]laintiffs do not compare the [challenged SV fund's] performance to any one comparator in a consistent fashion. Instead, it appears that Plaintiffs cherry-pick a handful of crediting rates from the fourteen comparators for each year." *Id.* And the Second Amended Complaint's claim that the Voya GIC "underperformed" by an average of "54.87%," is derived entirely from this flawed methodology comparing the Voya GIC's crediting rate against the average of the five Comparator GICs without establishing that *any* of them is a meaningful benchmark. SAC ¶ 147.

The Second Amended Complaint's reliance on purported benchmarks is further undermined by its mischaracterization of SVIA's own research. The Second Amended Complaint asserts that SVIA recently examined 135,000 retirement savings plans and found that "stable value assets in [retirement] plans grew at a compound annual rate of 4.1%." SAC ¶¶ 152-155 (quoting Randy Myers, *Retirement Plans and Stable Value: By the Numbers*, SVIA (July 21, 2025), https://www.stablevalue.org/retirement-plans-and-stable-value-by-the-numbers/) (alteration in original) ("SVIA, *Retirement Plans*"). The Second Amended Complaint attempts to use that figure as a benchmark against which to measure the Voya GIC's crediting rates. But Plaintiffs cut the quoted language off too soon. The SVIA article on which Plaintiffs rely actually discusses growth in *total stable value assets* (i.e., the total amount of money invested in SV products across plans), not crediting rates or investment returns, and explains in full that "plans grew at a compound annual rate of 4.1%, increasing from $300 million to $450 million." SVIA, *Retirement Plans*. In other words, the Second Amended Complaint conflates asset growth with crediting rates and in doing so makes a fundamental error that renders its purported 4.1% "benchmark" meaningless as a basis for comparison to the Voya GIC's returns.

Regardless of what kind of investment is at issue, "a showing of imprudence cannot come down to simply pointing to a fund with a better performance" or return rate over some slice of time. *Forman v. TriHealth, Inc.*, 40 F.4th 443, 448-449 (6th Cir. 2022) (quotation marks omitted); pp. 7-8, *supra*. That principle should have special force here. As a district court recognized in a recent post-trial decision, "a stable value option balances yield and capital preservation." *Iannone v. AutoZone, Inc.*, 2025 WL 2797074, at *16 (W.D. Tenn. Sept. 30, 2025). Accordingly, "fiduciaries are not required to chase the [SV investment with the] highest yield." *Id.*

After all, if one thing unites SV investments, it is their dependability as asset-*preservation* products. *See* pp. 9-12, *supra*. That cardinal feature surely deserves significant weight when evaluating a fiduciary's choice of SV product; market-beating returns are not the goal. As courts have recognized, an acontextual, time-limited focus on performance or return rate is almost always guaranteed to fail the plausibility standard, but it is *especially* problematic in the context of a challenge to the choice of an SV investment.[11] This Court should reaffirm that principle here.

III. Fearmongering as to the Voya GIC's purported risk does not plausibly suggest a plan fiduciary violated ERISA.

The Second Amended Complaint also homes in on the purported riskiness of the Voya GIC, contending that a prudent fiduciary would not have included this underperforming investment option that also "carried significantly more risk than other investment options" (SAC ¶ 15); and that the "Voya GIC . . . should have had a high crediting rate given its riskiness." SAC ¶ 113. These allegations conflate the general credit exposure associated with an insurer's general account with an inference that the selection of this particular product was imprudent.

As a preliminary matter, Voya's purported institutional risk does not drive the Voya GIC's crediting rate: crediting rates are generally calculated as "a function of the contract value of the

[11] *Accord Barchock v. CVS Health Corp.*, 886 F.3d 43, 49-53 (1st Cir. 2018) (affirming dismissal of SV claim based on crediting rate and emphasizing that "conservativism in the management of a stable value fund—when consistent with the fund's objectives disclosed to the plan participants—is no vice").

investment contract, the market value of the underlying asset portfolio, and the yield and duration of the underlying asset portfolio." *Contra* Nick Gage & Christina Burton, *Stable Value Crediting Rates* 2 (Aug. 2025), https://tinyurl.com/mje5us7k. Put differently, what drives the crediting rate is asset and contract value, not alleged institutional risk.

Moreover, these allegations regarding Voya's risk ignore the myriad state and federal protections that have been put in place over the last thirty years to protect those who purchase insurance products—including SV investors. "[S]table value funds, contract providers, investment managers, and other service providers involved in stable value have multiple layers of regulatory oversight," including from "a variety of federal and state governmental regulatory bodies." SVIA, *Is Stable Value Regulated?* (July 23, 2021), https://tinyurl.com/537wvwh5. With respect to offerings by insurers specifically, "insurance companies … are regulated by each insurance company's home state's State Insurance Commissioner and governed by state law." *Id.* Additionally, "insurers participating in the stable value market must gain approval … from any state where they are licensed and plan to issue their contracts." Randy Myers, *Understanding the Insurance Side of Stable Value*, SVIA (July 7, 2021), https://tinyurl.com/2uer22u7.

These state regulators "review which types of investments are eligible to be held in a stable value product, and how the crediting rate will be calculated." *Id.* "Among the dozens of factors regulators examine … are the core terms of the contract and the commitments made by the insurance company in that contract." *Id.* The "dual aim of the review … is to protect consumers and the *solvency of the insurance company*." *Id.* (emphasis added). This close review continues "[o]nce a contract is issued" with "regulators becom[ing] increasingly focused on the reserves and the asset-liability match … because they care about the financial stability, or solvency, of the insurance company." *Id.* These extensive regulations, including those focused on the insurer's solvency, apply fully despite ERISA's expansive preemption provision because state insurance laws are expressly excepted from ERISA's preemptive reach. *See* 29 U.S.C. § 1144(b)(2)(A).

In light of these extensive protections and fail-safes, Plaintiffs' insistence regarding the Voya GIC's "riskiness" falls flat. SAC ¶¶ 15, 113. Even absent these protections, Plaintiffs' allegations would still be belied by the public record: All ratings agencies rate Voya highly. *See* Voya Retirement Insurance & Annuity Co., *Financial Ratings* (July 9, 2026), tinyurl.com/mrxvrmsa. And these rating agencies are themselves heavily regulated by the SEC, which has determined they "produce[s] credit ratings with integrity." *See* SEC Office of Credit Ratings, *Staff Report on Nationally Recognized Statistical Rating Organizations* 4 (Feb. 2024), tinyurl.com/44r2drrb.

In short, SV investments are not the wild west. They are subject to overlapping layers of protection that exist specifically to protect plan participants. Allegations about the Voya GIC's supposed riskiness completely ignore the complex and interlocking protections that exist through heavy state regulation and do not plausibly suggest plan fiduciaries were asleep at the wheel simply because they chose an investment that was issued by an insurer a plan participant does not prefer.

IV. Lawsuits like this one will harm plan participants and beneficiaries.

The surge of meritless ERISA lawsuits like this has real consequences: it puts fiduciaries in a bind and makes offering plans prohibitively costly and risky. That is wholly at odds with a primary purpose of ERISA—to *encourage* employers to voluntarily offer retirement plans and a diverse set of options within those plans. *See Conkright*, 559 U.S. at 517. By focusing myopically on one factor and ignoring context, ERISA plaintiffs can manufacture claims based on virtually every possible fiduciary choice. Indeed, one ERISA complaint's purportedly imprudent choice is often another's prudent exemplar. For example, in 2017, plaintiffs sued GE for offering the GE RSP U.S. Equity Fund in its 401(k) plan. *See* Compl. ¶ 1, *Haskins v. Gen. Elec.*, No. 17-cv-01960 (S.D. Cal. Sept. 26, 2017), ECF No. 1. But another complaint lauded *that very fund* as a "superior performing alternative[]." *See* Compl. ¶ 122, *Harding v. Southcoast Hosps. Grp.*, No. 20-cv-12216 (D. Mass. Dec. 14, 2020), ECF No. 1. Fiduciaries have even had to defend against "diametrically opposed" claims, giving new meaning to the phrase "cursed-if-you-do, cursed-if-you-don't."[12]

The same Scylla-and-Charybdis danger pervades SV cases: some plaintiffs, as here, claim fiduciaries have been too *cautious* with their SV investments,[13] while others allege the exact opposite.[14] The only certainty fiduciaries face is that they will be sued no matter what they choose.

The ongoing wave of ERISA litigation has also "wreaked havoc on the market for fiduciary liability insurance." Jacklyn Wille, *Spike in 401(k) Lawsuits Scrambles Fiduciary Insurance Market*, Bloomberg Law (Oct. 18, 2021), https://tinyurl.com/46wk8zuv. Because ERISA litigation has become so common, fiduciary-liability insurers have been forced "to raise insurance premiums, increase policyholder deductibles, and restrict exposure with reduced insurance limits." *Excessive Fee Litigation* 4. If they are forced to absorb the cost of higher premiums and deductibles, many employers will inevitably have to offer less generous plans—reducing their employer contributions, declining to cover administrator fees when they otherwise would elect to do so, and reducing the services available to employees. And while large employers may have capacity to absorb some of these costs, for smaller employers who "cannot purchase adequate fiduciary liability insurance to protect their plan fiduciaries, the next step is to stop offering retirement plans to their employees." *Id.* Put simply, suits like this impose prohibitive costs on plan sponsors—and, by extension, plan participants and beneficiaries—with no offsetting benefits.

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[12] *E.g.*, *Evans v. Akers*, 534 F.3d 65, 68 (1st Cir. 2008).
[13] *E.g.*, *Ellis v. Fid. Mgmt. Tr. Co.*, 883 F.3d 1, 9 (1st Cir. 2018); *Jenkins v. Yager*, 444 F.3d 916, 925-26 (7th Cir. 2006).
[14] *E.g.*, Third Am. Compl. ¶ 7, *Whitley v. J.P. Morgan Chase & Co.*, 12-cv-02548 (S.D.N.Y. Dec. 16, 2014), ECF No. 182 (alleging "inherently risky" SV product).

CONCLUSION

The Court should dismiss the Second Amended Complaint.

Dated: September 8, 2026

Respectfully submitted,

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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 Southern District of Texas by using the court's CM/ECF system on September 8, 2026.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the court's CM/ECF system.

Dated: September 8, 2026

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