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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

MEMORANDUM 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* IN SUPPORT OF DISMISSAL

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INTRODUCTION

The Stable Value Investment Association ("SVIA") and Chamber of Commerce of the United States of America ("Chamber") respectfully move for leave to file a brief as *amici curiae* in the above-captioned case in support of Defendants' motion to dismiss. The proposed *amicus* brief is attached as Exhibit A. Defendants have consented to the filing of this brief. Counsel for Plaintiff informed counsel for SVIA and the Chamber that Plaintiff does not consent to this motion and intends to file an opposition.

As this Court has explained before, "[e]ven when a party is very well represented, an amicus may provide important assistance to the court." *C.P. v. N.J. Jersey Dep't of Educ.*, 2019 WL 6907490, at *2 (D.N.J. Dec. 19, 2019) (quoting *Neonatology Assocs., P.A. v. Comm'r of Internal Revenue*, 293 F.3d 128, 132 (3d Cir. 2002) (Alito, J.)). "[E]xamples of such assistance" warranting *amicus* participation include "collect[ing] background or factual references" concerning the issue at hand "that merit judicial notice," offering "particular expertise not possessed by any party to the case," presenting argument on "far-reaching" points placing the case in broader context, and "explain[ing] the impact a potential holding might have on an industry or other group." *Id.* (quoting *Neonatology Assocs.*, 293 F.3d at 132). "Ultimately, whether to grant *amicus* status is within the broad discretion of the district court." *Bernard v. Cosby*, 2022 WL 3273877, at *1 (D.N.J. Aug. 11, 2022)

(brackets, citation, and quotation marks omitted). Because the proposed *amicus* brief provides these benefits by drawing on the Chamber's and SVIA's deep knowledge of the issues raised in the case, the Court should exercise its discretion to grant the Chamber and SVIA *amicus* status.

SVIA brings a unique perspective as a non-profit organization dedicated to educating employers, employees, government officials, and the general public about the importance of saving for retirement and the contribution that stable-value ("SV") products—the type of investment products at issue in this case—can make toward financial security. A leading authority on retirement investing, SVIA serves as a forum for the exchange of ideas important to the stable-value industry. 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 stable-value investments offered in more than 244,000 defined-contribution plans. SVIA's membership and expertise allow it to offer a broad, real-world perspective on the proper legal framework for evaluating claims concerning the inclusion of SV investments as part of a diversified 401(k) plan line-up.

The Chamber also brings a unique perspective to this case as the world's largest business federation. The Chamber represents approximately 300,000 direct members and indirectly represents the interests of more than three million businesses

and professional organizations of every size, in every industry sector, and from every region of the country. Many of the Chamber's members maintain, administer, or provide services to employee-benefit plans governed by ERISA. In fact, the Chamber's membership is unique because it includes representatives from all aspects of the private-sector retirement system, such as plan sponsors, asset managers, recordkeepers, consultants, and other service providers.

Amici have played an active role in the development of ERISA law. The Chamber, for example, regularly submits comment letters when the Department of Labor ("DOL") engages in notice-and-comment rulemaking,[1] provides information to the Pension Benefit Guaranty Corporation ("PBGC") to support PBGC in its efforts to protect retirement incomes,[2] submits comments to the Department of Treasury on plan administration and qualification,[3] and provides testimony to DOL's standing ERISA Advisory Council.[4] Both the Chamber and SVIA have published

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[1] *See, e.g.*, Electronic Disclosure by Employee Benefit Plans (Nov. 22, 2019), https://tinyurl.com/mw2a8vxm.

[2] *See, e.g.*, Comments on the Interim Final Regulation for the Special Financial Assistance Program for Financially Troubled Multiemployer Plans (Aug. 10, 2021), https://tinyurl.com/2rmcr7ee; Letter from U.S. Chamber of Commerce Regarding Partitions of Eligible Multiemployer Plans (Aug. 18, 2015), https://tinyurl.com/2t7834bp.

[3] *See, e.g.*, Permanent Relief for Remote Witnessing Procedures (Sept. 29, 2021), https://tinyurl.com/3mczbhyh.

[4] *See, e.g.*, Statement of the U.S. Chamber of Commerce Regarding Gaps in Retirement Savings Based on Race, Ethnicity and Gender (Aug. 27, 2021), https://tinyurl.com/3ahvw7fh.

literature regarding issues relevant to the employment-based retirement benefits system and SV investments.[5]

Given its deep perspective and understanding of the issues, the Chamber has filed *amicus* briefs in a range of ERISA cases involving employee-benefit design or administration. *E.g.*, *Hughes v. Nw. Univ.*, 595 U.S. 170 (2022) (standard for pleading fiduciary-breach claim involving challenges to defined-contribution plan line-ups and service-provider arrangements); *Fifth Third Bancorp v. Dudenhoeffer*, 573 U.S. 409 (2014) (standard for pleading fiduciary-breach claim involving employer stock); *Smith v. CommonSpirit Health*, 37 F.4th 1160 (6th Cir. 2022) (standard for pleading fiduciary-breach claim involving 401(k) plan fees and investment line-up); *Sweda v. Univ. of Pa.*, 923 F.3d 320 (3d Cir. 2019) (same), [6] *abrogation recognized by Mator v. Wesco Distrib., Inc.*, 102 F.4th 172 (3d Cir. 2024); *Meiners v. Wells Fargo & Co.*, 898 F.3d 820 (8th Cir. 2018) (same). SVIA, too, has filed briefs in important ERISA cases concerning SV investments. *See* Br. of Stable Value Investment Association, *Principal Life Ins. Co. v. Rozo*, No. 19-1462 (U.S. July 20, 2020) (supporting cert. petition concerning whether a service

[5] *E.g.*, U.S. Chamber of Commerce, *Private Retirement Benefits in the 21st Century: A Path Forward* (2012), https://tinyurl.com/2mdm82n6; SVIA, *Stable Value at a Glance* (Dec. 31, 2024), https://tinyurl.com/yyt37f94; SVIA, *Stable Value Market Segments* (Dec. 31, 2022), https://tinyurl.com/28btrarv.

[6] In *Sweda*, the Chamber's motion for leave to file an amicus brief was granted over the plaintiffs' opposition.

provider offering SV investment can be considered a "fiduciary" for ERISA purposes).

District courts have recognized the value of *amici*'s perspective. For example, in a number of recent cases, district courts have granted the Chamber leave to participate as an *amicus* at the motion-to-dismiss stage. As one court explained, "given the Chamber's experience with both retirement plan management and ERISA litigation, the Chamber can offer a valuable perspective on the issues presented in this matter." Order at 5, *Sigetich v. Kroger Co.*, No. 21-697 (S.D. Ohio July 22, 2022), ECF No. 47 (granting the Chamber's motion for leave to file over plaintiffs' opposition); *see also Luckett v. Wintrust Fin. Corp.*, 2023 WL 4549620, at *5 (N.D. Ill. July 14, 2023) (granting Chamber's motion for leave to participate as *amicus* at motion-to-dismiss stage in ERISA case); Minute Entry at 1, *Baumeister v. Exelon Corp.*, No. 21-6505 (N.D. Ill. Mar. 11, 2022), ECF No. 44 (explaining that the Chamber's "proposed amicus brief could provide the Court wi[th] a broader view of the impact of the issues raised in this case"—"an appropriate basis to allow amicus participation"); Electronic Order, *Locascio v. Fluor Corp.*, No. 22-154 (N.D. Tex. Oct. 20, 2022), ECF No. 63 (granting the Chamber's motion for leave to file over the plaintiffs' opposition); Order at 1, *Singh v. Deloitte LLP*, No. 21-8458 (S.D.N.Y. Apr. 14, 2022), ECF No. 41 (same); Minute Entry at 1, *Barcenas v. Rush Univ. Med.*

Ctr., No. 22-366 (N.D. Ill. Apr. 4, 2022), ECF No. 38 (same).[7]

Because of their unique memberships (which together represent nearly all stakeholders in the private-sector retirement community), the Chamber and SVIA's collective knowledge about the management of retirement plans, the legal issues surrounding ERISA, and the types of claims asserted in ERISA lawsuits extends beyond any single defendant or group of defendants named in a particular case. The Chamber and SVIA seek to provide this broader perspective on key threshold infirmities in the allegations made by the Complaint in this case—in particular, its failure to situate the JPMorgan SVF at issue in the larger context of SV investments, to offer any meaningful detail concerning key characteristics of the JPMorgan SVF, and to establish that the other SV investments it compares the JPMorgan SVF against are actually "meaningfully similar," and thus comparatively relevant, *see Anderson v. Intel Corp. Inv. Pol'y Comm.*, --- F. 4th ---, 2025 WL 1463295, at *5 (9th Cir. May 22, 2025).

The Chamber and SVIA's brief will therefore aid the Court's analysis in all the ways that traditionally support a*micus* participation. It will marshal "background or factual references" about the broader context, provide "particular expertise not

[7] As these decisions reflect, *amicus* briefs are routinely accepted at the motion-to-dismiss stage, including from the Chamber itself. *See, e.g.*, Minute Order, *New York v. U.S. Dep't of Labor*, No. 18-1747 (D.D.C. Nov. 9, 2018); Order, *United States v. DaVita Inc.*, No. 21-229 (D. Colo. Oct. 20, 2021), ECF No. 65; Order at 1, *United States v. Walgreen Co.*, No. 21-32 (W.D. Va. Sept. 9, 2021), ECF No. 22.

possessed by any party to the case," and consider "far-reaching" points beyond the parties' more focused presentation. *Neonatology Assocs.*, 293 F.3d at 132. Perhaps most significantly, the brief will help "explain the impact a potential holding" in this case "might have on [all] industry" stakeholders and the larger ERISA landscape. *Id.* (quoting Luther T. Munford, *When Does the Curiae Need An Amicus?*, 1 J. App. Prac. & Process 279, 281 (1999)).

Specifically, the proposed *amicus* brief (1) describes the surge in ERISA litigation over the past decade (including a recent uptick in suits targeting the use of SV investments); (2) emphasizes that because ERISA prioritizes flexibility in fiduciary choice, the ERISA pleading standard focuses on fiduciary *process* rather than investment *results*; (3) offers crucial context regarding the makeup and diversity of SV investments, including why different kinds of SV products might be attractive to different plans; and (4) explains how the Complaint ignores that context, focuses myopically on one characteristic (crediting rates) in a vacuum, and exploits cherry-picked comparisons. The brief also highlights examples from past cases—many of which touch on issues that are relevant to the case but not central to the main arguments, and thus are not cited much or at all in the parties' briefs—to further contextualize the issues in the case. Finally, the brief will explain how permitting meritless, context-free allegations like these to get pass the motion-to-dismiss stage causes harm, by subjecting fiduciaries to intolerable litigation risk for virtually any

choice they make and ramping up fiduciary-insurance costs to the point where smaller, less-resourced employers are discouraged from offering retirement plans at all.

Given the extensive collective experience of their members in both retirement-plan management and ERISA litigation, the Chamber and SVIA offer a distinct vantage point that will be of value to the Court as it considers Plaintiff's Complaint and whether it surpasses the plausibility threshold. And importantly, the fact that the Chamber and SVIA believe the outcome of that inquiry is clear here—analyzed under the proper context-sensitive standard, the allegations here are plainly implausible—does not disqualify them as valuable *amici*. After all, "by the nature of things an *amicus* is not normally impartial," *Waste Mgmt. of Pa., Inc. v. City of York*, 162 F.R.D. 34, 36 (M.D. Pa. 1995) (citation omitted), and "expression of [a] opinion as to [the] appropriate outcome by [an] *amicus curiae* is proper," *Yip v. Pagano*, 606 F. Supp. 1566, 1568-69 (D.N.J. 1985) (citation omitted). In other words, a strong advocate is still the "court's friend." *Neonatology Assocs.*, 293 F.3d at 131. Indeed, it is a "fundamental assumption of our adversary system that strong (but fair) advocacy on behalf of opposing views promotes sound decision making." *Id*.

Finally, the proposed *amicus* brief is being filed well before Plaintiff's opposition is due and therefore will not delay resolution of the motion to dismiss.

E.g., *Tafas v. Dudas*, 511 F. Supp. 2d 652, 660 (E.D. Va. 2007) (*amicus* briefs were timely where they "were filed a relatively short time after the case began" and before the hearing on the relevant motion). And although Plaintiff has decided to oppose this motion for leave to file, this Court (like others) has regularly permitted *amici* to participate in its proceedings, including over an opposition from one of the parties. *E.g.*, *Kyocera Document Sols. Am., Inc. v. Div. of Admin.*, 708 F. Supp. 3d 531, 542 n.16 (D.N.J. 2023) (granting leave for *amici* to file brief over party's opposition); *C.P.*, 2019 WL 6907490, at *2-3 (similar); *Yip*, 606 F. Supp. at 1567 (similar).

CONCLUSION

For these reasons, the Chamber and SVIA respectfully request that the Court grant them leave to participate as *amici curiae* and accept the proposed *amicus* brief, which accompanies this motion.

Dated: June 9, 2025

Respectfully submitted,

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