No. 23-970

IN THE

Supreme Court of the United States

NVIDIA CORPORATION and JENSEN HUANG,

Petitioners,

v.

E. OHMAN J:OR FONDER AB and STICHTING PENSIOENFONDS PGB ,

Respondents.

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

BRIEF FOR THE ANTI-FRAUD COALITION AS AMICUS CURIAE SUPPORTING RESPONDENTS

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INTEREST OF THE AMICUS[1]

Amicus curiae The Anti-Fraud Coalition (TAF Coalition) is a nonprofit public interest organization dedicated to combating fraud in the United States' securities markets and protecting whistleblowers who expose such fraud. TAF Coalition is committed to preserving effective anti-fraud legislation at the federal and state levels. The organization has worked to publicize the whistleblower provisions of state and federal statutes, regularly participates in litigation as amicus curiae, and has provided testimony to Congress about ways to improve whistleblower statutes and protections. TAF Coalition is the 501(c)(3) arm of Taxpayers Against Fraud, which was founded in 1986.

Through its work on civil anti-fraud statutes, TAF Coalition has become intimately familiar with the requirement to plead fraud with particularity, and has observed firsthand how that requirement can be properly applied to weed out spurious lawsuits while permitting meritorious ones—and at other times misapplied to stymie meritorious claims on technicalities. TAF Coalition has a strong interest in a balanced and fair application of particularity standards that allows our nation's fraud laws to function as intended. Accordingly, it files this brief to address the rule petitioners propose in their first question presented, *i.e.*, that plaintiffs who allege scienter based on a company's internal documents must describe with particularity the contents of those documents.

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[1] No counsel for a party authored this brief in whole or in part and nobody other than amicus and its counsel made a monetary contribution intended to fund the preparation or submission of this brief.

SUMMARY OF ARGUMENT

This Court should reject petitioners' proposed bright-line rule requiring plaintiffs who base scienter allegations on a company's internal documents to plead with particularity the contents of those documents. Instead, this Court should continue to follow the holistic approach it described in *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308 (2007), and *Matrixx Initiatives, Inc. v. Siracusano*, 563 U.S. 27 (2011), under which it considers all of plaintiffs' allegations together to determine whether plaintiffs have alleged particular facts supporting a strong inference of scienter.

The holistic approach coheres with the way courts around the country have applied analogous particularity requirements, including the requirement to plead circumstances constituting fraud with particularity under Federal Rule of Civil Procedure 9(b). In that context, too, courts generally refrain from requiring plaintiffs to plead the details of documents possessed solely by the defendants. They do this for three reasons, all of which apply here.

First, courts apply particularity requirements in a context-specific manner, seeking to ensure that defendants have notice of the allegations against them, and to weed out spurious lawsuits. Because there are many ways to satisfy those objectives that do not require pleading the contents of a defendant's internal documents, courts reject inflexible, categorical rules like the one petitioners propose.

Second, even when particularity requirements apply, plaintiffs need not prove their cases at the plead-

ing stage. A bright-line rule requiring plaintiffs to allege with particularity the contents of a defendant's internal documents is tantamount to requiring the plaintiffs to produce their evidence in the complaint itself—and indeed to plead more than may be required to win at trial (given that scienter can always be established through circumstantial evidence that may or may not include the details of internal documents). Such a burden has no place at the pleading stage.

Third, in most cases, outsider plaintiffs—and even insider whistleblowers—cannot reasonably be expected to possess a defendant's internal documents or share them with private investors, and so a requirement to plead the contents of those documents would scuttle meritorious cases while generating windfalls for secretive fraudsters who manage to keep their documents locked up tight. Pleading rules should not unduly interfere with the operation of underlying substantive anti-fraud laws.

ARGUMENT

I. This Court Should Reject Petitioners' Proposed Bright-Line Rule That Pleading Scienter With Particularity Requires Pleading the Contents of a Defendant's Internal Documents

Although the PSLRA's pleading requirements are unique, its requirement to plead particular facts giving rise to a strong inference of scienter resembles Rule 9(b)'s requirement to plead circumstances constituting fraud with particularity. Precedents interpreting Rule 9(b) accordingly are helpful in understanding how to apply the PSLRA. And in the other direction,

this Court's decisions regarding the PSLRA may inform how courts interpret other particularity requirements. This Court should reject petitioners' proposed categorical rule for the three reasons described in the summary of argument, *supra*—and also to ensure that petitioners' contrived rule does not spill over and cause mischief in other contexts.

A. Petitioners' Rule Conflicts With the Flexible Approach That Courts Adopt When Applying Particularity Requirements

The word "particularity" is inherently at least somewhat ambiguous. Every allegation, however vague, is pleaded with *some* particularity (assuming it says anything at all)—and almost every allegation, no matter how detailed, could always be pleaded with *more* particularity. Thus, to say that facts or circumstances must be alleged "with particularity" does not automatically answer the question of *how much* particularity is required.

Courts have correctly recognized that the concept of "particularity" is context-sensitive. They therefore take a flexible, holistic approach to Rule 9(b). As the leading treatise explains, "one cannot focus exclusively on the fact that Rule 9(b) requires particularity in pleading the circumstances of fraud without taking account of the general simplicity and flexibility contemplated by the federal rules." Charles A. Wright, et al., 5A Fed. Prac. & Proc. Civ. § 1298 (4th ed.). "[T]he degree of detail required … often turns on the substantive context in which the fraud is alleged to have occurred," paying attention to "the complexity of the transaction in question," [t]he relationship of the parties," whether a case turns on "omissions rather than

affirmative misrepresentations," and other relevant factors. *Ibid*. Ultimately, the most important "consideration for a federal court in making a judgment as to the sufficiency of a pleading for purposes of Rule 9(b) is the determination of how much detail is necessary to give adequate notice to an adverse party and to enable that party to prepare a responsive pleading." *Ibid*.

As relevant here, "Rule 9(b)'s fraud pleading requirement should not be understood to require absolute particularity as to matters within the opposing party's knowledge that the pleader is not privy to at the time of the pleading and can only be developed through discovery." 5A Fed. Prac & Proc. Civ. § 1298. When "the necessary information lies within the defendant's control," the rule permits plaintiffs to make allegations about those facts "on information and belief," which is "commonplace and often a necessity in many litigation contexts." *Ibid*. And "courts may relax Rule 9(b)'s fraud pleading requirement if the defendant is alleged to have concealed the facts that would permit the plaintiff to plead fraud with particularity." *Ibid*.

This Court has seldom commented on Rule 9(b), but it has embraced the foregoing principles. In *Rotella v. Wood*, 528 U.S. 549, 560 (2000), the Court explained that Rule 9(b)'s requirements are tempered by "the flexibility provided by Rule 11(b)(3), allowing pleadings based on evidence reasonably anticipated after further investigation or discovery." In support, the Court cited *Corley v. Rosewood Care Center, Inc.*, 142 F.3d 1041, 1050-51 (7th Cir. 1998), for the proposition that particularity requirements may be "relax[ed" where the "plaintiff lacks access to all facts necessary to detail claim." 528 U.S. at 560.

As this summary makes clear, pleading with particularity "does not inflexibly dictate adherence to a preordained checklist of 'must have' allegations." *United States ex rel. Heath v. AT&T, Inc.*, 791 F.3d 112, 125 (D.C. Cir. 2015). Instead, Rule 9(b) "is context specific and flexible"—and so, "[d]epending on the claim," it may be satisfied "without including all the details of any single court-articulated standard." *United States ex rel. Grubbs v. Kanneganti*, 565 F.3d 180, 188, 190 (5th Cir. 2009); *see also United States ex rel. Thayer v. Planned Parenthood of the Heartland*, 765 F.3d 914, 918 (8th Cir. 2014) (similar). Instead of applying "artificial limits," courts hold that "what matters here is whether the complaint adequately pleads the circumstances of fraud to satisfy the dual purposes of Rule 9(b), not whether the complaint employs a particular means of doing so." *United States v. United Healthcare Ins. Co.*, 848 F.3d 1161, 1183 n.11 (9th Cir. 2016).

Those purposes are straightforward. First, "allegations of fraud must be specific enough to give defendants notice of the particular misconduct which is alleged to constitute the fraud charged so that they can defend against the charge and not just deny that they have done anything wrong." *United Healthcare*, 848 F.3d at 1180 (quotation marks omitted). Second, the rule deters "the filing of complaints as a pretext for the discovery of unknown wrongs," "protect[s] defendants from the harm that comes from being subject to fraud charges," and "prohibit[s] plaintiffs from unilaterally imposing … social and economic costs absent some factual basis." *Ibid.*; *see also, e.g.*, *Gose v. Native Am. Servs. Corp.*, 109 F.4th 1297, 1317 (11th Cir. 2024) (similar description); *Clinton v. Sec. Ben. Life Ins. Co.*,

63 F.4th 1264, 1277 (10th Cir. 2023); *Foisie v. Worcester Polytech. Inst.*, 967 F.3d 27, 51 (1st Cir. 2020); *United States ex rel. Bledsoe v. Cmty. Health Sys., Inc.*, 501 F.3d 493, 510 (6th Cir. 2007) (similar). In other words, the particularity requirement ensures that defendants have adequate notice of the allegations against them, and weeds out spurious lawsuits based on nothing more than speculation. When a complaint provides adequate notice to defendants and adequate assurance that the lawsuit is not completely groundless, it has pleaded fraud with adequate particularity.

Requiring plaintiffs to plead the contents of a defendant's internal documents is almost never necessary to satisfy these purposes. It obviously does nothing to provide notice to defendants—because the relevant documents are *already* in the defendants' possession, and so pleading their contents would not tell the defendants anything they do not already know. *See, e.g.*, *United States ex rel. Polukoff v. St Mark's Hosp.*, 895 F.3d 730, 745 (10th Cir. 2018) (holding that Rule 9(b) did not require the plaintiff to allege details regarding which of the defendant's employees had specific knowledge because the defendants already knew that information, and because "Rule 9(b) does not require omniscience; rather the Rule requires that the circumstances of the fraud be pled with enough specificity to put defendants on notice as to the nature of the claim") (quoting *Williams v. Duke Energy Int'l, Inc.*, 681 F.3d 788, 803 (6th Cir. 2012)).

Pleading the detailed contents of a defendant's internal documents is also not generally necessary to weed out spurious or groundless cases. To be sure, such allegations, if made, are highly probative: when the contents of a company's internal documents reveal

its public statements to be false, that is extremely strong evidence of scienter. But the fact that such allegations may be *sufficient* to establish scienter does not make them *necessary* in every case. Instead, courts should evaluate whether the plaintiff's claim has an adequate factual basis as this Court instructed: not by "scrutiniz[ing] each allegation in isolation," but instead "assess[ing] all the allegations holistically." *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 326 (2007); *Matrixx Initiatives, Inc. v. Siracusano*, 563 U.S. 27, 49 (evaluating allegations "collectively," and rejecting a "proposed bright-line rule"); *cf. e.g.*, *Clinton*, 63 F.4th at 1280 (explaining that courts evaluate compliance with Rule 9(b) by considering the complaint "as a whole"); *United Healthcare*, 848 F.3d at 1181 (assessing particularity by considering specific allegations "in the context of the complaint as a whole").

When courts take such a holistic approach, they will often be able to determine that the plaintiff's allegations are sufficiently particular and plausible even where the details of a defendant's internal documents are not spelled out in the complaint. For example, if the defendant's statements are so clearly and egregiously false that an inference of dishonesty or recklessness is the most natural conclusion, then pleading the details of internal documents is not necessary. Or if the plaintiff's assertions about the likely contents of internal documents are highly plausible in light of other allegations—such as the plaintiff's allegations about the way the business ordinarily keeps documents, what types of information those documents ordinarily contain, and who ordinarily reviews the documents—then it is not necessary for plaintiffs to also

allege the precise contents of the documents. And these are only examples illustrating the general principle, *i.e.*, that the facts alleged in each complaint will vary and each complaint must be considered as a whole—and this context-sensitive, holistic approach leaves no room for arbitrary per se rules like the one petitioner asks this Court to adopt.

One issue from the False Claims Act context is illuminating here. The False Claims Act imposes liability for, *inter alia*, presenting a false or fraudulent claim to the Government. 31 U.S.C. § 3729(a)(1)(A). In many cases, defendants engage in fraudulent conduct that likely led to the presentment of false claims—but the plaintiff has no firsthand knowledge of specific claims. For example, a nurse might have observed that physicians routinely provided medically unnecessary procedures to Government beneficiaries—but had no role in billing the Government for those procedures, and therefore no firsthand knowledge that specific claims were presented to the Government.

Courts have assessed how much particularity Rule 9(b) requires about the specific false claims, and have generally determined that plaintiffs can satisfy Rule 9(b) in two distinct ways. The first is to provide a representative example false claim. Under this path, plaintiffs must identify at least one affected claim with specificity—but need not identify every claim. *See, e.g.*, *Bledsoe*, 501 F.3d at 510-11. The second way allows plaintiffs to allege "particular details of a scheme to submit false claims paired with reliable indicia that lead to a strong inference that claims were actually submitted." *Grubbs*, 565 F.3d at 190; *see also Heath*, 791 F.3d at 126; *Foglia v. Renal Ventures Mgmt., LLC*, 754 F.3d 153, 156 (3d Cir. 2014); *United States ex rel.*

Chorches v. Am. Med. Response, Inc., 865 F.3d 71, 89 (2d Cir. 2017); *United States ex rel. Lemmon v. Envirocare of Utah, Inc.*, 614 F.3d 1163, 1172 (10th Cir. 2010) (similar).

Courts have determined that a variety of facts constitute reliable indicia giving rise to a strong inference that claims were submitted.[2] For example, if the submission of claims was "the logical conclusion of the particular allegations" in a complaint, that sort of "circumstantial evidence" can suffice. *Grubbs*, 565 F.3d at 192; *United States ex rel. Silingo v. WellPoint, Inc.*, 904 F.3d 667, 679 (9th Cir. 2018) (finding "ample circumstantial evidence from which to infer that the defendant organizations submitted [fraudulent] risk adjustment data and certified the data's validity"); *United States ex rel. Lusby v. Rolls-Royce Corp.*, 570 F.3d 849, 854 (7th Cir. 2009) (finding Rule 9(b) satisfied when the particular facts alleged in the complaint gave rise to a "plausible" inference that false statements were made to the Government). If the defendant's fraud was widespread, thus making it likely that false claims were submitted, that can be enough. *See United States ex rel. Colquitt v. Abbott Labs.*, 858 F.3d 365, 372 (5th Cir. 2017) (explaining that existence of widespread kickback scheme permitted "[a] strong inference that the named hospitals submitted claims to Medicare" because "[n]early every hospital in America participates

[2] Circuit precedents are not entirely uniform about what kinds of facts constitute reliable indicia giving rise to a strong inference that claims were submitted. That disagreement is not relevant here because the key point is that no court requires a representative example in every instance. In other words, no court embraces a hard, categorical rule like the one petitioner asks this Court to adopt.

in Medicare and would most likely have billed Medicare had they performed procedures using Abbott's stents on a person over age 65," a practice the complaint alleged was "common"). A plaintiff may also have knowledge about how the defendant ordinarily bills for services. *See Thayer*, 765 F.3d at 917 (holding that firsthand knowledge about billing practices would suffice). Or, the plaintiff may allege, "for instance, that upon information and belief, bills are routinely sent to the government upon completion of [services] and are routinely paid as presented." *United States ex rel. Grant v. United Airlines Inc.*, 912 F.3d 190, 199 (4th Cir. 2018).

The inquiry is analogous to the PSLRA question before the Court: like the PSLRA's requirement to plead facts giving rise to a strong inference of scienter, courts require False Claims Act plaintiffs to plead facts giving rise to a strong inference that claims were presented. Petitioner's proposed rule is analogous to *always* requiring plaintiffs to provide representative example false claims. But as courts recognize in the False Claims Act context, such a rigid standard is unnecessary to fulfill the purposes of the particularity requirement.

Instead, plaintiffs can and should be able to establish scienter with any allegations showing that a defendant likely spoke with a culpable state of mind—even if they cannot plead the details of internal documents. Thus, when complaints describe what types of documents the defendant has, what data the documents show, and how the documents ordinarily are used to inform the defendant's knowledge, such that it is reasonable to infer that the defendant was aware of information that rendered his statements false, that is

sufficient to satisfy the purposes of requiring particularity at the pleading stage. That is especially clear because recklessness suffices—and so allegations that a defendant had access to true information is itself strong circumstantial evidence that the defendant at least ignored a risk that his statements were false.

This Court applied similar reasoning in *Matrixx Initiatives*, when it rejected a defendant's "proposed bright-line rule requiring an allegation of statistical significance to establish a strong inference of scienter." 563 U.S. at 49. There, the defendant argued that because reports of an adverse side effect of its flagship drug were not statistically significant, the inference that the defendant omitted those results with scienter was not "strong" enough to satisfy the PSLRA. In rejecting that argument, this Court explained that the lack of statistical significance was not dispositive when the complaint's allegations, "taken collectively," weighed in the other direction. *Ibid*. The Court should reaffirm that same holistic approach here.

B. Petitioners' Rule Improperly Demands That Plaintiffs Prove Their Case at the Pleading Stage

Petitioners' rule is also inconsistent with the fundamental nature of the pleading stage—which requires a presentation of allegations, not proof. *See, e.g.*, *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007) (declining to "impose a probability requirement at the pleading stage," and instead calling only "for enough fact to raise a reasonable expectation that discovery will reveal evidence" of wrongdoing). The Fifth Circuit has explained that to read a particularity rule to require details of internal documents "at pleading is one

small step shy of requiring production of actual documentation with the complaint, a level of proof not demanded to win at trial and significantly more than any federal pleading rule contemplates." *Grubbs*, 565 F.3d at 190. "[S]urely a procedural rule ought not be read to insist that a plaintiff plead the level of detail required to plead at trial." *Id*. at 189. Other circuit courts have reached the same conclusion, recognizing that because the elements of fraud can be established by circumstantial evidence, even at trial, requiring plaintiffs to supply direct evidence at the pleading goes too far. *See Heath*, 791 F.3d at 126-27 ("We decline to read Rule 9(b) as requiring more factual proof at the pleading stage than is required to win on the merits."); *Foglia*, 754 F.3d at 156 (similar).

As Judge Easterbrook explained, "[t]o say that fraud has been *pleaded* with particularity is not to say that it has been *proved* (nor is proof part of the pleading requirement)." *Lusby*, 570 F.3d at 855. Indeed, "even a requirement of proof beyond a reasonable doubt need not exclude all *possibility* of innocence; nor need a pleading exclude all possibility of honesty in order to give the particulars of fraud." *Id*. at 854. Instead, "[i]t is enough to show, in detail, the nature of the charge, so that vague and unsubstantiated accusations of fraud do not lead to costly discovery and public obloquy." *Id*. at 854-55. Thus, when a complaint plausibly alleged that the defendant misled the Government during contract negotiations, but lacked specific details about statements made, the Seventh Circuit explained that it was improper to demand "granular detail" about "documents or conversations" that the plaintiff had no access to at the pleading stage—while

recognizing that "at trial or upon a motion for summary judgment," the burden would be different. *United States ex rel. Prose v. Molina Healthcare of Ill., Inc.*, 17 F.4th 732, 741 (7th Cir. 2021).

This Court recognized the same point in the context of the PSLRA in *Tellabs*, when it explained that "[t]he inference that the defendant acted with scienter need not be irrefutable, *i.e.*, of the 'smoking gun' genre, or even the 'most plausible of competing inferences.'" 551 U.S. at 324. Indeed, the Court explicitly stated that "under our construction of the 'strong inference' standard, a plaintiff is not forced to plead more than she would be required to prove at trial." *Id*. at 328. A rule always requiring plaintiffs to plead the contents of a defendant's internal documents, however, would go well beyond the bar this Court set. *See also Matrixx*, 563 U.S. at 49 (holding that "respondents have adequately pleaded scienter. Whether respondents can ultimately prove their allegations and establish scienter is an altogether different question").

C. Petitioners' Rule Would Block Meritorious Cases Without Improving Courts' Ability to Dismiss Spurious Ones

Finally, courts do not inflexibly require plaintiffs to plead the details of a defendant's internal documents because such a requirement would unduly undermine anti-fraud statutes by barring many meritorious cases. Whether a plaintiff has access to a defendant's internal documents is usually a matter of happenstance. A plaintiff or a whistleblower may have access to the documents; a public investigation may reveal them; or they may leak some other way. But defendants that practice good information discipline will

deploy technical, administrative, and legal tools to prevent their internal documents from being exposed. These can include contractual actions, civil tort actions, or even referral for prosecution under criminal trade secret laws that potentially apply to employees and others who copy or take a company's internal information. Such discipline does not, however, necessarily correlate with lawful behavior: many effective fraudsters are quite secretive. Always requiring a defendant to slip, or a plaintiff to surreptitiously gain access to internal documents, would substantially curtail the efficacy of many anti-fraud laws to the detriment of investors and the public.

Indeed, it is important to recognize how rarely plaintiffs will possess a defendant's sensitive internal documents before discovery. Outsider plaintiffs will almost never have access to those materials because defendants do not generally allow them to become public. But even insider whistleblowers may not be able to copy or take the relevant documents—at least not without running afoul of contractual or statutory confidentiality restrictions. Although whistleblowers are rightly protected when they access information to disclose it to their own counsel or to the Government, the same protections do not apply when whistleblowers provide documents to private attorneys for investors. Thus, there will be many cases where whistleblowers with highly probative knowledge may confirm to private securities plaintiffs that their claims are valid (as the former employees in this case did for respondents), but not by providing documents. Petitioner's rule would force whistleblowers who wish to help defrauded investors into a dilemma: they can either provide insufficient information (while still taking on all

the risks of whistleblowing), or they can provide sufficient information at the cost of taking on *even more* risk to themselves. Faced with that choice, the likely outcome is that many whistleblowers will be deterred from assisting defrauded investors.

Recognizing these issues, courts hold that when particular facts are peculiarly within a defendant's knowledge (as the contents of internal documents surely are), Rule 9(b) does not require plaintiffs to plead those facts. *See, e.g.*, *Corder v. Antero Res. Corp.*, 57 F.4th 384, 401 (4th Cir. 2023) (permitting allegations based on information and belief when "critical facts … are uniquely within the defendant's knowledge and control," and citing precedents from Second, Third, Fourth, Fifth, Seventh, Ninth, and D.C. Circuits adopting the same rule); *Ambassador Press, Inc. v. Durst Image Tech. U.S., LLC*, 949 F.3d 417, 421 (8th Cir. 2020) (same).

In False Claims Act cases, courts have further recognized that adopting an unduly rigid particularity rule—*e.g.*, requiring plaintiffs to plead details that are peculiarly within a defendant's possession—"would discourage the filing of meritorious *qui tam* suits that can expose fraud against the government." *Chorches*, 865 F.3d at 86; *see also Lusby*, 570 F.3d at 854 (holding that applying Rule 9(b) to require plaintiffs to describe specific requests for payment would "take[] a big bite out of *qui tam* litigation"). Rather than taking such a rigid approach, courts have instead recognized that Rule 9(b) "is context specific and flexible and must remain so" to "effectuate[] Rule 9(b) without stymieing legitimate efforts to expose fraud." *Grubbs*, 565 F.3d at 190. Thus, rather than take the most limited view,

courts have sought a "workable construction" of the particularity requirement. *Ibid*.

The same points apply with full force to the securities laws. Indeed, in *Tellabs*, this Court explained that it was striving toward "a workable construction" of the PSLRA's "'strong inference' standard, a reading geared to the PSLRA's twin goals: to curb frivolous, lawyer-driven litigation, while preserving investors' ability to recover on meritorious claims." 551 U.S. at 322. That closely parallels the language courts have employed to explain why they apply Rule 9(b) in a holistic, flexible manner.

The policy concerns are similar, too. Through no fault of their own, investors face just as many obstacles as False Claims Act plaintiffs—if not more—when it comes to acquiring a defendant's internal documents before bringing suit. Thus, they may know what kinds of documents a company has—and knowledgeable witnesses and news sources may reveal the key details of what those documents likely say—but the plaintiffs are unlikely to possess the documents themselves. Moreover, the plaintiffs' inability to access the documents will typically not suggest that the defendant lacked scienter, because sophisticated culpable defendants will understandably do whatever they can to prevent the dissemination of evidence that could harm them. For that reason, imposing a special heightened pleading rule requiring plaintiffs to have those documents before they sue would scuttle many meritorious cases. Indeed, to put an even finer point on it, petitioners' rule would allow cases to proceed against sloppy defendants that fail to protect their internal documents, while rewarding those who protect those docu-

ments aggressively. But the PSLRA is designed to distinguish meritorious cases from spurious ones; it is not intended to compromise meritorious cases merely because the defendant exercises good information discipline.

Fortunately, the Court need not impose that risk. Adhering to the holistic approach this Court set forth in *Tellabs* and *Matrixx*—and which courts have generally followed when applying particularity requirements—mitigates the risk that meritorious cases will be blocked, while still allowing the PSLRA to weed out truly spurious cases as Congress intended.

* * *

At bottom, this ought to be an easy issue. This Court has already set forth a holistic approach to pleading with particularity and has rejected proposed bright-line rules contradicting that approach. This Court's holdings cohere with lower-court precedents interpreting other particularity requirements for fraud cases, and need no further complication. The Court should accordingly reject petitioners' proposed categorical rule and maintain the status quo's workable construction of the PSLRA.

CONCLUSION

The decision below should be affirmed.

Respectfully submitted,

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