No. 23-

In the Supreme Court of the United States

MARK HABELT, INDIVIDUALLY AND ON BEHALF OF OTHERS SIMILARLY SITUATED,
PETITIONER
v.
IRHYTHM TECHNOLOGIES, INC., ET AL.,
RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO THE U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

JOSHUA B. SILVERMAN
OMAR JAFRI
JENNIFER PAFITI
JEREMY A. LIEBERMAN
CHRISTOPHER P.T. TOUREK
POMERANTZ LLP
10 S. LaSalle Street Ste. 3505
Chicago, IL 60603

JEFFREY C. BLOCK
JACOB WALKER
MARK BYRNE
BLOCK & LEVITON, LLP
260 Franklin Street Ste. 1860
Boston, MA 02110

XIAO WANG
Counsel of Record
UNIVERSITY OF VIRGINIA
SCHOOL OF LAW SUPREME
COURT LITIGATION CLINIC
580 Massie Road
Charlottesville, VA 22903
(434) 924-8956
x.wang@law.virginia.edu

Counsel for Petitioner

QUESTION PRESENTED

Does a named plaintiff who initiated a suit from which he was never dismissed or removed, who retains a financial stake in the litigation's outcome, and who could be precluded from pursuing further redress have standing to appeal?

PARTIES TO THE PROCEEDING

Petitioner Mark Habelt was the plaintiff in the district court proceedings and appellant in the court of appeals proceedings.

Respondents iRhythm Technologies, Inc., Kevin M. King, Michael J. Coyle, and Douglas J. Devine were defendants in the district court proceedings and appellees in the court of appeals proceedings.

After Petitioner initiated this action, the district court appointed the Public Employees' Retirement System of Mississippi ("PERSM") as lead plaintiff under the Private Securities Litigation Reform Act of 1995 ("PSLRA"), but PERSM declined to appeal from the district court's judgment and does not seek relief before this Court.

RELATED PROCEEDINGS

United States District Court (N.D. Cal.):

Habelt v. iRhythm Technologies, Inc., No. 21-cv-00776, 2021 WL 2207365 (June 1, 2021). Motion for appointment as lead plaintiff granted June 1, 2021.

Habelt v. iRhythm Technologies, Inc., No. 21-cv-00776, 2022 WL 971580 (Mar. 31, 2022). Judgment entered Mar. 31, 2022.

United States Court of Appeals (9th Cir.):

Habelt v. iRhythm Technologies, *Inc.*, 83 F.4th 1162 (9th Cir. 2023). Judgment entered Oct. 11, 2023.

Habelt v. iRhythm Technologies, *Inc.*, No. 22-15660 (9th Cir. Dec. 6, 2023). Rehearing denied Dec. 6, 2023.

TABLE OF CONTENTS

Question presented i
Parties to the proceeding ii
Related proceedings iii
Table of authorities vi
Petition for writ of certiorari 1
Opinions below 1
Jurisdiction 1
Statutory provisions involved 1
Introduction 2
Statement of the case 5
A. Factual background. 5
B. Proceedings below 6
Reasons for granting the petition 11
I. The courts of appeals are divided on when to look beyond a complaint's caption to determine party status. 11
A. Most circuits look outside the caption only to identify defendants. 12
B. A minority of circuits look beyond the caption to identify plaintiffs. 15
II. The courts of appeals are split on how to show nonparty appellate standing. 17
A. This Court has left unsettled the parameters of when nonparties may pursue an appeal 18
B. Most courts of appeals have examined whether a nonparty has an interest or stake in the litigation. 19

III. The Ninth Circuit erred in dismissing Habelt's appeal. 23
A. The decision below conflicts with the text and purpose of Rule 10(a). 23
B. The decision below conflicts with other Federal Rules of Civil Procedure. 26
C. The decision below's test for nonparty appeals is unsound. 28
IV. This case is an excellent vehicle to resolve important questions dividing the federal courts. 31
Conclusion 34

TABLE OF AUTHORITIES

Page(s)

Cases

Abeyta v. City of Albuquerque,
664 F.3d 792 (10th Cir. 2011).....198, 28

Abraugh v. Altimus,
26 F.4th 298 (5th Cir. 2022) 4, 14, 17, 24

Bayer v. U.S. Dep't of Treasury,
956 F.2d 330 (D.C. Cir. 1992).....4, 13

Blanchard v. Terry & Wright, Inc.,
331 F.2d 467 (6th Cir. 1964).....4, 15, 16

Broidy Cap. Mgmt. LLC v. Muzin,
61 F.4th 984 (D.C. Cir. 2023) 20

Cameron v. EMW Women's Surgical Ctr., P.S.C.,
595 U.S. 267 (2022).....3, 12

China Agritech v. Resh,
584 U.S. 732 (2018).....28, 30, 31

Cho v. Blackberry Ltd.,
991 F.3d 155 (2d Cir. 2021) 24, 32

City of Cleveland v. Ohio,
508 F.3d 827 (6th Cir. 2007)..... 29

Curtis v. City of Des Moines,
995 F.2d 125 (8th Cir. 1993).....20, 30, 32

Devlin v. Scardelletti,
536 U.S. 1 (2002) 8, 12, 18, 19, 28

Doe v. Pub. Citizen,
749 F.3d 246 (4th Cir. 2014).....11, 20, 30, 32

Hernandez-Avila v. Averill,
725 F.2d 25 (2d Cir. 1984) 4, 13, 13, 16, 17, 32

Hevesi v. Citigroup, Inc.,
366 F.3d 70 (2d Cir. 2004) 24, 25

Hilao v. Est. of Marcos,
393 F.3d 987 (9th Cir. 2004).....8, 9

Hispanic Soc. of N.Y.C. Police Dep't Inc. v. N.Y.C. Police Dep't,
806 F.2d 1147 (2d Cir. 1986) 18

Home Prods. Int'l, Inc. v. United States,
846 F. App'x 890 (Fed. Cir. 2021)..... 21

Johnson v. Johnson,
466 F.3d 1213 (10th Cir. 2006).....12, 13

Jones v. Griffith,
870 F.2d 1363 (7th Cir. 1989)..... 23

Kanuszewski v. Michigan Dep't of Health & Hum. Servs.,
927 F.3d 396 (6th Cir. 2019).....15, 16

Kimberly Regenesis, LLC v. Lee Cnty.,
64 F.4th 1253 (11th Cir. 2023) 17, 32

Marino v. Ortiz,
484 U.S. 301 (1988).....12, 18, 19, 28

McCormick v. Braverman,
451 F.3d 382 (6th Cir. 2006).....19, 20

Microsystems Software, Inc. v. Scandinavia Online AB,
226 F.3d 35 (1st Cir. 2000) 32

Mission Prod. Holdings, Inc. v. Tempnology, LLC,
139 S. Ct. 1652 (2019) 21, 22

Mitchell v. Maynard,
80 F.3d 1433 (10th Cir. 1996) 23

Mullane v. Cent. Hanover Bank & Tr. Co.,
339 U.S. 306 (1950) 10, 25

Northview Motors, Inc. v. Chrysler Motors Corp.,
186 F.3d 346 (3d Cir. 1999) 11, 32

Official Comm. Of Unsecured Creditors of WorldCom, Inc. v. S.E.C.,
467 F.3d 73 (2d Cir. 2006) 5, 11, 19, 21, 28

Ordower v. Feldman,
826 F.2d 1569 (7th Cir. 1987) 13

Peralta v. Heights Med. Ctr., Inc.,
485 U.S. 80 (1988) 25

Phillips v. Girdich,
408 F.3d 124 (2d Cir. 2005) 24

Plain v. Murphy Fam. Farms,
296 F.3d 975 (10th Cir. 2002) 28

Porter v. S. Nev. Adult Mental Health Servs.,
788 F. App'x 525 (9th Cir. 2019) 31

Potter v. Comm'r of Soc. Sec.,
9 F.4th 369 (6th Cir. 2021) 31

S.E.C. v. Enterprise Tr. Co.,
559 F.3d 649 (7th Cir. 2009) 20

S.E.C. v. Forex Asset Mgmt. LLC,
242 F.3d 325 (5th Cir. 2001) 11

Sanchez v. R.G.L.,
761 F.3d 495 (5th Cir. 2014) 21

Shakman v. Clerk of Cir. Ct.,
969 F.3d 810 (7th Cir. 2020) 20

Smith v. Bayer Corp.,
564 U.S. 299 (2011) 26

Sonner v. Premier Nutrition Corp.,
49 F.4th 1300 (9th Cir. 2022) 22

Surowitz v. Hilton Hotels Corp.,
383 U.S. 363 (1966) 26

Trackwell v. U.S. Gov't,
472 F.3d 1242 (10th Cir. 2007) 3, 4, 12, 16, 24

United States ex rel. Eisenstein v. City of New York,
556 U.S. 928 (2009) 9, 26

United States v. I.C.C.,
337 U.S. 426 (1949) 12

United States v. Osage Wind, LLC,
871 F.3d 1078 (10th Cir. 2017) 20, 30

United States v. Stoerr,
695 F.3d 271 (3d Cir. 2012) 21

Warth v. Seldin,
422 U.S. 490 (1975) 25

Whitley v. U.S. Air Force,
932 F.2d 971 (7th Cir. 1991) 13

Williams v. Bradshaw,
459 F.3d 846 (8th Cir. 2006) 4, 8, 9, 14, 17

Page(s)

Statutes & Rules

28 U.S.C.
§ 1254 1
§ 1658 30

Federal Rules of Civil Procedure
Rule 8 26
Rule 10 ..... 1-5, 11-13, 15-17, 23, 24, 26, 27, 32, 33
Rule 24 26
Rule 25 27

Page(s)

Other Authorities

Br. for U.S., *Osage Wind, LLC v. Osage Mins. Council,* 139 S. Ct. 784 (2019) (No. 17-1237) 17

Charles Alan Wright & Arthur R. Miller, 5A *Federal Practice and Procedure* (4th ed.) 3, 17, 26

Jared A. Goldstein, *Equitable Balancing in the Age of Statutes*, 96 Va. L. Rev. 485 (2013) 29, 30

Joseph A. Grundfest, *Quantifying the Significance of Circuit Splits in Petitions for Certiorari: The Case of Securities Fraud Litigation* 1 (Stan. L. Sch. & Rock Ctr. for Corp. Governance Working Paper, Paper No. 254, 2024), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4768231 32

Steven S. Gensler, 1 *Federal Rules of Civil Procedure, Rules and Commentary*, *Rule 10* (Feb. 2024 Update) 23, 24

PETITION FOR WRIT OF CERTIORARI

Petitioner Mark Habelt respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The opinion of the Ninth Circuit is published at 83 F.4th 1162 (9th Cir. 2023) and is reproduced in the appendix to this petition at App. 3a–30a. The order of the district court granting Respondents' motion to dismiss is unpublished and is reproduced at App. 32a–81a. The order of the district court appointing a lead plaintiff is unpublished and is reproduced at App. 83a–87a.

JURISDICTION

The Ninth Circuit issued its opinion on October 11, 2023. It denied a petition for rehearing and rehearing en banc on December 6, 2023. This Court has jurisdiction under 28 U.S.C. § 1254(1). Justice Kagan granted Petitioner's applications for extensions of time to file a petition for writ of certiorari, from March 5 to April 16, 2024.

STATUTORY PROVISIONS INVOLVED

Federal Rule of Civil Procedure 10 and relevant provisions of the Private Securities Litigation Reform Act of 1995 are reproduced at App. 92a–97a.

INTRODUCTION

This petition raises important questions concerning a named plaintiff's standing to appeal. The Ninth Circuit's decision below deepens two circuit splits: one on the interpretation of Federal Rule of Civil Procedure 10(a), and another on nonparty standing to appeal.

To start, Rule 10(a) requires "[t]he title of the complaint" to "name all the parties" in a suit. Fed. R. Civ. P. 10(a). That is exactly what Mark Habelt did when, in February 2021, he "filed a securities fraud complaint on behalf of himself and a putative class of persons who purchased iRhythm's common stock between August 4, 2020, and January 28, 2021," and suffered losses because of Respondents' alleged misrepresentations. App. 5a-6a. The caption of this initial complaint was clear: it named Habelt as the plaintiff, and iRhythm Technologies Inc. ("iRhythm") and its then-CEO, Kevin King, as the defendants.

Pursuant to the PSLRA, the district court selected an institutional investor to be the case's lead plaintiff. But that investor, PERSM, did not relegate Habelt to the sidelines after its appointment. To the contrary, though PERSM eventually named several additional defendants to the case, it continued to list Habelt as a party in the caption of the first and second amended complaints. The district court and the defendants did the same. Indeed, "every caption" in every pleading in this case "specifically list[ed] Habelt as 'plaintiff.'" App. 16a n.7 (Bennett, J., dissenting). All this aligned perfectly with Congressional intent under the PSLRA: to encourage plaintiffs to pool resources while still safeguarding an outlet for the private enforcement of securities law.

But after the district court issued judgment in favor of Respondents, PERSM declined to seek further review. Habelt, on the other hand, wanted to continue protecting the interests of the putative class he always sought to represent. And so, with PERSM's consent, he took up the mantle of appealing on behalf of the putative class.

On the merits, Habelt received some measure of validation. Judge Bennett reasoned that "three of the alleged misrepresentations [had been] improperly dismissed." App. 26a. But the other judges on the panel did not address the case's merits. Instead, the panel dismissed Habelt's appeal because the majority reasoned that Habelt (1) was no longer "a party to the action" and (2) did not have "standing to appeal as a non-party." App. 6a.

Such a holding departs from how other courts of appeals have read Rule 10(a). That rule's text is clear: The caption of every complaint "must name all the parties" in a suit. Fed. R. Civ. P. 10(a). And in a typical case, "[o]ne need hardly look beyond the case caption" to identify who those parties are. *Cameron v. EMW Women's Surgical Ctr., P.S.C.*, 595 U.S. 267, 284 (2022) (Thomas, J., concurring). But in a nod to the realities of litigation—for example, when the caption contains "a misnomer regarding a party," Charles Alan Wright & Arthur R. Miller, 5A *Federal Practice and Procedure* § 1321 (4th ed.)—many circuits recognize a narrow exception to Rule 10(a). In these courts, "when the plaintiff names the wrong defendant in the caption or when the identity of the defendants is unclear from the caption, courts may look to the body of the complaint to determine who the intended and proper defendants are." *Trackwell v. U.S. Gov't*, 472 F.3d 1242, 1243–44 (10th Cir. 2007). This discretion is usually exercised when the

plaintiff proceeds pro se or with minimal representation. *See, e.g.*, *id.*; *Bayer v. U.S. Dep't of Treasury*, 956 F.2d 330, 334 (D.C. Cir. 1992).

However, most courts of appeals decline to look outside the caption to "'determin[e] who the plaintiffs to a suit are since plaintiffs draft complaints.'" *Abraugh v. Altimus*, 26 F.4th 298, 303 (5th Cir. 2022) (quoting *Williams v. Bradshaw*, 459 F.3d 846, 849 (8th Cir. 2006)); *see also, e.g.*, *Hernandez-Avila v. Averill*, 725 F.2d 25, 27 n.4 (2d Cir. 1984); App. 13a (Bennett, J., dissenting).

The Sixth and now Ninth Circuits sit on the other end of this split—going beyond a complaint's caption to not only identify defendants, but also to determine plaintiff party status. *Blanchard v. Terry & Wright, Inc.*, 331 F.2d 467, 469 (6th Cir. 1964); App. 8a–9a. And even then, the Ninth Circuit's decision goes further. Courts in the Sixth Circuit look outside the caption to determine whether an *unnamed* party should be added as a proper plaintiff. The Ninth Circuit, though, is the first court of appeals to strip party status from a *named* plaintiff. Such a tack relegates Rule 10(a) to the dustbin.

The decision below also presents an excellent opportunity for resolving an entrenched and acknowledged split over nonparty appellate standing. As Judge Bennett recognized in his dissent, the Ninth Circuit breaks rank with other circuits when it comes to this inquiry. Most circuits, in formulating their test, evaluate whether the nonparty has an interest affected by the lower court's decision. App. 23a–24a ("Other circuits also examine a nonparty's stake in the litigation when assessing standing to appeal."). The Ninth Circuit is the only circuit that does not, a point which doomed Habelt here.

This petition, in sum, presents two significant questions that divide the federal courts. These issues are particularly salient for PSLRA cases, where individual investors who bring complaints often litigate alongside institutional investors who are appointed as lead plaintiffs. But they also affect matters beyond the PSLRA, with questions over Rule 10(a) and nonparty appellate standing recurring in many other contexts.

Finally, this case is an appropriate vehicle for addressing these splits. If the Court were to repudiate the Ninth Circuit's approach to Rule 10(a), for instance, it would revive this appeal. Separately, if the Court were to require lower courts to consider, in seeking appellate review, whether nonparties have "a plausible affected interest" impacted by the judgment, *Off. Comm. of Unsecured Creditors of WorldCom, Inc. v. S.E.C.*, 467 F.3d 73, 78 (2d Cir. 2006) (Sotomayor, J.), that consideration would have strongly "counsel[ed] in favor of hearing" Habelt's appeal, App. 24a (Bennett, J., dissenting).

STATEMENT OF THE CASE

A. Factual background.

Respondent iRhythm is a "digital healthcare company" and Kevin King, Michael Coyle, and Douglas Devine "each held the position of CEO of iRhythm" at some point between August 2020 and June 2021. App. 32a, 40a.

In 2020 and 2021, King and Coyle made several public statements about the expected Medicare reimbursement rate for the Zio XT, iRhythm's core product. App. 26a–28a (Bennett, J., dissenting). In August 2020, King stated

that iRhythm's submissions to CMS officials on the Zio XT included "everything they can get from us." App. 26a (Bennett, J., dissenting). In December 2020, King stated that there was not "really a basis" for CMS to "lower" iRhythm's proposed reimbursement rate for the Zio XT absent any "new data." App. 27a (Bennett, J., dissenting). And in April 2021, Coyle noted that iRhythm had not spoken to the regional Medicare contractor "about how pricing was being established" for the Zio XT. App. 28a (Bennett, J., dissenting).

Taken together, these statements "expressed optimism that CMS would adopt a proposed rule setting a reimbursement rate of about $380" for the Zio XT. App. 24a (Bennett, J., dissenting). But the Zio XT ultimately received a rate of $115—seen by the market as a "historically low Medicare reimbursement rate." App. 5a. This news "caus[ed] a steep decline in iRhythm's share price and the resignations of several executives." App. 25a (Bennett, J., dissenting).

B. Proceedings below.

Petitioner Mark Habelt purchased iRhythm stock in December 2020 and January 2021, and suffered significant losses following the Zio XT rate announcement. In February 2021, he filed a complaint on behalf of himself and others similarly situated, alleging that Respondents had defrauded the putative class by "expressing confidence that CMS would adopt its preferred reimbursement rate," even though they knew such a prospect to be unlikely. App. 25a (Bennett, J., dissenting). Habelt hired counsel, investigated the relevant facts, pleaded substantive allegations based on that investigation, and paid applicable filing fees. He also, consistent with the PSLRA, distributed notice to the putative class.

In April 2021, three investors moved to be appointed lead plaintiff. App. 84a. Habelt did not file a motion because, under the PSLRA, a district court must consider, when selecting a lead plaintiff, any "person or group of persons" that "either filed the complaint or made a motion in response to a notice." App. 96a. Because Habelt fell in the former category, no such lead plaintiff motion was necessary.

After considering the relevant lead plaintiff candidates, the district court selected PERSM as the lead plaintiff. App. 83a. As the court explained, the PSLRA "presum[es] that the most adequate plaintiff" in any securities action is the person or group who "has the largest financial interest in the relief sought by the class." App. 6a n1. As an institutional investor, it was "undisputed" that PERSM held the "largest financial interest" among lead plaintiff candidates. App. 84a. The court also selected PERSM's attorneys, Pomerantz LLP, "as lead counsel for the Class." App. 86a. Further, "[t]o ensure efficiency," the court stated that "no other law firm shall work on this action for the putative class without prior approval." App. 87a.

PERSM filed two amended complaints. Both mirror Habelt's original complaint. Both the amended complaints and the original complaint list Habelt as a named plaintiff in the case caption. All complaints allege fraudulent misrepresentations by Respondents in the handling of the Zio XT. All assert violations of the same securities laws.

In March 2022, the district court dismissed the second amended complaint for failure to state a claim. App. 81a. In its order, the district court noted that "Plaintiff"—i.e., Habelt—had "filed this action on February 1, 2021." App.

42a. The court referred separately to PERSM as the "Lead Plaintiff," rather than the sole plaintiff. *Id.*

PERSM declined to appeal the district court's judgment. It, however, consented to Habelt doing so, and Habelt filed a timely notice of appeal. On October 11, 2023, the Ninth Circuit dismissed Habelt's appeal for lack of jurisdiction. App. 3a. In reaching this conclusion, the panel noted that (1) "only parties to a lawsuit" or (2) certain nonparties in "exceptional circumstances" may "appeal an adverse judgment." App. 6a (first quoting *Devlin v. Scardelletti*, 536 U.S. 1, 7 (2002); and then quoting *Hilao v. Est. of Marcos*, 393 F.3d 987, 992 (9th Cir. 2004)).

On (1), the panel acknowledged that "Habelt filed the initial complaint in this matter." App. 9a. It added that Habelt remained in the case caption, and that the caption is typically "probative of the question whether an individual is a party to the action." *Id.* n.2 (citing *Williams*, 459 F.3d at 849). But in the panel's view, "[b]eyond an individual's mere inclusion in the caption, the more important indication of whether she is a party to the case are the allegations in the body of the complaint." *Id.* (internal quotation marks omitted). On this front, the panel argued, Habelt's party status had been "extinguished." *Id.* That is because "[t]he body of the operative pleading"—the second amended complaint—established PERSM as the case's "sole plaintiff." *Id.* The second amended complaint, the panel noted, made "mention neither of Habelt nor of his individual claims." *Id.*

On (2), standing to appeal by a nonparty, the court held that Habelt likewise fell short. As it explained, in the Ninth Circuit, "[a] non-party may have standing to appeal when" (i) they "participate[] in the district court

proceedings" and (ii) "the equities of the case weigh in favor of hearing the appeal." App. 10a (quoting *Hilao*, 393 F.3d at 992). Habelt, the panel asserted, had not sufficiently participated because he did not "apply to be appointed lead plaintiff," challenge PERSM's appointment, or "participate in the suit" after PERSM's selection as lead plaintiff. *Id.* On the equities, the majority argued that Habelt had not been "haled" into court "against his will," nor had he moved to intervene. App. 10a–11a. Moreover, Respondents had "agreed at oral argument that Habelt [was] not bound by the district court's judgment," and could therefore still seek relief by filing another suit against iRhythm. App. 10a.

Judge Bennett dissented. As he outlined, four circumstances established Habelt's continuing party status.

First, Habelt "initiated the lawsuit by filing the first complaint." App. 12a (citing *United States ex rel. Eisenstein v. City of New York*, 556 U.S. 928, 933 (2009)). There could thus be "no allegation he wasn't a party at the start, and there is similarly no allegation that any filing explicitly removed that status." App. 15a.

Second, even after PERSM's appointment, Habelt "remained in the caption" of every filing, including in the operative complaint. App. 13a n.5. Drawing on case law from the Eighth Circuit, Judge Bennett explained that Habelt's continued inclusion in the caption, especially in the operative complaint, was "entitled to considerable weight when determining who the plaintiffs to a suit are since plaintiffs draft complaints." App. 13a (quoting *Williams*, 459 F.3d at 849).

Third, Habelt's claims were "clearly covered by the substantive allegations in the body of the" operative

complaint. App. 12a (cleaned up). There was no question that Habelt, like PERSM, invested in iRhythm and lost money, and that these losses were caused by Respondents' alleged misrepresentations. Here, Judge Bennett faulted the majority for failing to distinguish between a named plaintiff "who files an original class-action complaint . . . and remains in the caption of later complaints" from "*unnamed* members of the putative class." App. 14a. That view "ignores that the [second amended complaint] encompasses all the factual allegations and legal claims raised in the original complaint, *brought by Habelt*." *Id.*

Fourth, Habelt "never evinced any intent to remove himself as a party." App. 12a (citing *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950)). Habelt did not withdraw, PERSM continued to treat Habelt as a named plaintiff, and the district court never issued a notice of termination. App. 17a.

Judge Bennett also concluded that Habelt had established nonparty appellate standing. App. 19a. Like the majority, Judge Bennett acknowledged that Habelt did not engage in extensive motions practice following PERSM's appointment. But that is because "the district court's order appointing PERSM specifically provided that other than PERSM's counsel, 'no other law firm shall work on this action for the putative class.'" App. 21a n.13. Finding a lack of participation under these conditions would, in Judge Bennett's view, turn "the PSLRA [into] a trap for the unwary." App. 20a. Along these same lines, the equities favored Habelt's appeal because "the most important" equity was "the lack of actual and clear notice to Habelt that, at some unknown point, he lost his party status and thus his right to appeal." App. 22a. Last, Judge Bennett recognized that other courts assess

nonparty standing differently from the Ninth Circuit, citing law from other circuits that examine whether a nonparty has "a plausible affected interest" or "stake in the litigation" because of the district court's judgment. App. 23a–24a (citing *WorldCom*, 467 F.3d at 78; *Northview Motors, Inc. v. Chrysler Motors Corp.*, 186 F.3d 346, 349–50 (3d Cir. 1999); *Doe v. Pub. Citizen*, 749 F.3d 246, 259–62 (4th Cir. 2014); *S.E.C. v. Forex Asset Mgmt. LLC*, 242 F.3d 325, 328–30 (5th Cir. 2001)). That interest—which is explicitly not part of the Ninth Circuit's rubric—would have "counsel[ed] in favor of hearing [Habelt's] appeal." App. 24a. Having tackled standing, Judge Bennett explained why the district court erred on the merits—i.e., why the operative complaint stated a plausible claim for securities fraud. App. 26a.

The Ninth Circuit denied a petition for rehearing on December 6, 2023. App. 89a.

REASONS FOR GRANTING THE PETITION

I. THE COURTS OF APPEALS ARE DIVIDED ON WHEN TO LOOK BEYOND A COMPLAINT'S CAPTION TO DETERMINE PARTY STATUS.

On its face, Rule 10(a)'s language is clear: "The title of the complaint must name all the parties." Fed. R. Civ. P. 10(a). Following that command as written produces a straightforward—and different—result in this case. After all, the "title of the [operative] complaint," *id.*, just like every other complaint in this case, named Habelt as a party. And since "parties to a lawsuit, or those that properly become parties, may appeal an adverse judgment," Habelt should have been able to go forward

with his appeal. *Devlin*, 536 U.S. at 7 (quoting *Marino v. Ortiz*, 484 U.S. 301, 304 (1988)).

Still, the longstanding practice of both this Court and the courts of appeals has been to "look behind [the] names that symbolize the parties" in a caption, *United States v. I.C.C.*, 337 U.S. 426, 430 (1949), because—in some cases—"case captions are not determinative as to the identity of the parties to the action," *Cameron*, 595 U.S. at 284 (2022) (Thomas, J., concurring) (cleaned up). Where the courts of appeals disagree, though, is when and under what circumstances to depart from Rule 10(a)'s text.

A. Most circuits look outside the caption only to identify defendants.

The majority view, taken by more than half a dozen circuits, is to look past the caption if necessary to identify a case's proper defendants. These courts generally exercise such discretion in matters brought by a pro se or otherwise underrepresented plaintiff.

Trackwell v. U.S. Government, 472 F.3d 1242 (10th Cir. 2007), is instructive. There, the plaintiff, "proceeding pro se, filed a complaint" alleging "that the Clerk of the United States Supreme Court had repeatedly withheld from Justice Stephen Breyer an application [that] he [had] submitted." *Id.* at 1243. "In the captions of his [original] complaint and his amended complaint," the plaintiff named only the "United States Government" as a defendant. *Id.* But, as the Tenth Circuit explained, "in a pro se case when the plaintiff names the wrong defendant in the caption or when the identity of the defendants is unclear from the caption, courts may look to the body of the complaint to determine who the intended and proper defendants are." *Id.* at 1243–44 (citing *Johnson v.*

Johnson, 466 F.3d 1213, 1215–16 (10th Cir. 2006)). Invoking that principle, the *Trackwell* court looked outside the caption to hold that the Clerk of the U.S. Supreme Court and the Supreme Court itself were, in fact, proper defendants. *Id.*

The Seventh Circuit has, in this same vein, "looked beyond the caption to determine the defendants in a case." *Whitley v. U.S. Air Force*, 932 F.2d 971, at *1 (7th Cir. 1991) (citations omitted). Thus, in *Ordower v. Feldman*, 826 F.2d 1569, 1570 (7th Cir. 1987), the court concluded that there were fourteen defendants after reviewing the body of the complaint, despite only eight of those fourteen parties being named in the caption.

Similarly, in *Bayer v. U.S. Department of Treasury*, 956 F.2d 330, 334 (D.C. Cir. 1992), the court rejected a subject-matter-jurisdiction challenge because plaintiff had "named as defendant the Department rather than the Secretary" of the Treasury. Writing for the D.C. Circuit, then-Judge Ginsburg characterized such a "plea as utterly unworthy, for the name change is readily made" by "[c]hanging the designation of defendant from 'Department' to 'Secretary.'" *Id.* at 334–35.

Even so, most courts of appeals have put limits on how far they are willing to part from Rule 10(a)'s text. As the foregoing cases spotlight, they have looked to the body of the complaint to add defendants not named in the caption. *See* App. 13a n.5 (Bennett, J., dissenting) ("[T]he substance of a complaint determines who the proper defendants are."). But they have rejected requests to look past the caption to determine plaintiff party status.

The Second Circuit's decision in *Hernandez-Avila v. Averill*, 725 F.2d 25 (2d Cir. 1984), exemplifies this point. At issue there was whether, in a suit about an unlawful

search, an individual—Cora—was a plaintiff even though she "did not sign [the original] complaint" and had not, for the first four years of the case, been part of the caption. *Id.* at 28. In rejecting Cora's belated efforts to enter the case, the court observed that she "did not in any way seek to participate in the action, and neither the court, nor [the named plaintiff], nor the defendants treated her as a party." *Id.*

Similarly, in *Abraugh v. Altimus*, 26 F.4th 298, 303 (5th Cir. 2022), the Fifth Circuit declined to recognize a plaintiff who "was not listed in the caption of the original complaint" even though the purported plaintiff was referenced in the complaint's body. As the court explained, "even if we were to accept that omission as a named party in the caption of the complaint is not necessarily determinative as to the identity of the parties to the action, courts at least give the caption considerable weight when determining who the plaintiffs to a suit are since plaintiffs draft complaints." *Id.* (cleaned up).

Finally, *Williams v. Bradshaw*, 459 F.3d 846 (8th Cir. 2006), ties several of these themes together. There, the Eighth Circuit held that a plaintiff's heirs were not parties because they were not named in the complaint's caption. *Id.* at 848–49. As in *Hernandez-Avila* and *Abraugh*, *Williams* declined to look to the substantive allegations of the complaint, which discussed plaintiff's heirs at length. Instead, as *Williams* emphasizes, "plaintiffs draft complaints." *Id.* at 849. That drafting must, of course, include drafting of the case caption. As a result, the names on the caption are "entitled to considerable weight when determining who the plaintiffs to a suit are." *Id.*

B. A minority of circuits look beyond the caption to identify plaintiffs.

A subset of cases from the Sixth Circuit have departed further from Rule 10(a)'s text, to look past the caption to evaluate plaintiff party status.

Blanchard v. Terry & Wright, Inc., 331 F.2d 467, 468 (6th Cir. 1964), involved a dispute between a laborer and contractor over materials used to construct a federal dam. On appeal, the Sixth Circuit deflected a challenge by the contractor to a lack of diversity jurisdiction. It reasoned that even if diversity of citizenship were in doubt, "the contract for the construction of the dam and spillway was with the United States." *Id.* at 469. Such "allegations were sufficient to invoke [federal question] jurisdiction under the Miller Act," since the Act makes the United States a plaintiff to the suit. *Id.* Hence, while "true that the name of the United States does not appear in the caption of the complaint," the court needed to "look to the allegations of the complaint in order to determine the nature of plaintiffs' cause of action" and, per the Miller Act, treat the United States as an additional plaintiff. *Id.* (citation omitted).

In a similar vein, in *Kanuszewski v. Michigan Department of Health & Human Services*, 927 F.3d 396 (6th Cir. 2019), the Sixth Circuit noted that "errors in captions are common and need not be viewed as fatal defects." *Id.* at 406 n.4 (cleaned up). It therefore declined to dismiss a suit where the body of the complaint indicated that two parents were bringing claims on their own behalf, though the caption arguably suggested these parents were only bringing claims on behalf of their children. *Id.*

Importantly, in both *Blanchard* and *Kanuszewski*, the Sixth Circuit looked outside the caption to recognize and

add *unnamed* plaintiffs as parties. The Ninth Circuit's decision represents a meaningful difference in kind from those cases. Indeed, like the cases where courts looked past the caption to identify unnamed defendants, *Blanchard* went past the caption to identify an unnamed plaintiff. *Compare Blanchard*, 331 F.2d at 469 (identifying the United States, which was absent from the caption, as a proper plaintiff), *with Trackwell*, 472 F.3d at 1243–44 (identifying an unnamed United States employee as a proper defendant). Similarly, in *Kanuszewski*, the court looked outside the caption to identify "each parent" as an individual plaintiff even though they captioned their complaint as "[Parents' names] as parent-guardians and next friend to their minor children." *See* 927 F.3d at 406 n.4 (internal quotation marks omitted) (alteration in original). Both these cases represent—at most—limited departures from Rule 10(a), in which the failure to name persons in the caption was excusable.

Here, on the other hand, the Ninth Circuit offered no such analogue or limiting principle, instead ignoring the caption to extinguish a *named* plaintiff's party status. Despite Rule 10(a)'s clear mandate, then, the panel reasoned that "a person or entity can be named in the caption of a complaint without necessarily becoming a party to the action." App. 8a (citations omitted). The Ninth Circuit's holding thus permits courts to strip party status from named plaintiffs because "the *more important* indication" of plaintiff status lies in the body of the complaint, even if the case caption explicitly says otherwise. App. 9a (emphasis added) (citation omitted). This new rule inverts and supersedes Rule 10(a). It goes well beyond the limited expansion undertaken in *Blanchard* and *Kanuszewski* and, more importantly, cannot be squared with the reasoning in *Hernandez-*

Avila, 725 F.2d at 28, *Abraugh*, 26 F.4th at 303, and *Williams*, 459 F.3d at 848–49.

II. THE COURTS OF APPEALS ARE SPLIT ON HOW TO SHOW NONPARTY APPELLATE STANDING.

The Ninth Circuit, on top of its expansive spin on Rule 10, also deepened another split, on the requirements necessary for a nonparty to bring an appeal. That split has been acknowledged by courts, *see Kimberly Regenesis, LLC v. Lee Cnty.*, 64 F.4th 1253, 1261 (11th Cir. 2023) ("Our sister circuits have adopted various tests for assessing when it is that a nonparty (who hasn't intervened) may appeal."), and recognized by commentators, *see* Charles Alan Wright & Arthur R. Miller, 15A *Federal Practice and Procedure* § 3902.1 (3d ed.) ("[C]ourts have not yet worked out entirely clear standards governing nonparty appeals."). It was the subject of a call for the views of the Solicitor General just six years ago, in which the United States acknowledged that there was "tension among the circuits." *See* U.S. Br. at 12, *Osage Wind, LLC v. Osage Mins. Council* (17-1237).[1] As the United States' brief in that case outlines, the "varying standards" taken by the lower courts emerges from questions left unresolved by two of this Court's decisions. *Id.* at 14.

[1] *Osage Wind* presented a "poor vehicle in which to address any conflict on [the] standards for nonparty appeals." U.S. Br. at 15, *Osage Wind* (17-1237). But, as discussed in Part IV, this case presents no such vehicle problems.

A. This Court has left unsettled the parameters of when nonparties may pursue an appeal.

To start, *Marino v. Ortiz*, 484 U.S. 301 (1988), addressed whether petitioners who were not parties in district court proceedings could appeal a settlement. The case arose out of the Second Circuit, which dismissed petitioners' appeal and held that "[a]s a general rule, only a party of record in a lawsuit has standing to appeal from a judgment of the district court." *Hispanic Soc. of N.Y.C. Police Dep't Inc. v. N.Y.C. Police Dep't*, 806 F.2d 1147, 1152 (2d Cir. 1986). In so finding, the Second Circuit acknowledged that there were "exceptions to this general rule," including "when the nonparty has an interest that is affected by the trial court's judgment." *Id.* Yet these exceptions, the Second Circuit held, were not "relevant to the present matter." *Id.* This Court later affirmed the Second Circuit's judgment, emphasizing the general "rule that only parties to a lawsuit, or those that properly become parties, may appeal an adverse judgment." *Marino*, 484 U.S. at 304. But this Court did not reject, nor did it endorse, the Second Circuit's understanding that there were exceptions to that general rule. Instead, the Court advised nonparties to move to intervene to preserve their rights to appeal. *Id.*

Devlin v. Scardelletti, 536 U.S. 1 (2002), though, did recognize an "exception to the *Marino* rule." *Abeyta v. City of Albuquerque*, 664 F.3d 792, 796 (10th Cir. 2011) (describing relationship between *Marino* and *Devlin*). There, the Court held that unnamed class members who are not parties in district court proceedings should be "considered [parties] for the purposes of appealing the approval of [a] settlement" because they are bound by any settlement or judgment against the class. *Devlin*, 536

U.S. at 7. Accordingly, so long as class members "object[] in a timely manner to approval of the settlement," they may "bring an appeal," even "without first intervening." *Id.* at 14. "The label 'party' does not," as this Court explained, "indicate an absolute characteristic, but [is] rather a conclusion about the applicability of various procedural rules that may differ based on context." *Id.* at 10.

Neither *Marino* nor *Devlin*, though, definitively addresses under what other circumstances a nonparty in district court proceedings may appeal. Absent any such guidance, three broad approaches have emerged.

B. Most courts of appeals have examined whether a nonparty has an interest or stake in the litigation.

The Second Circuit charts the clearest course, doing so in a case decided shortly after *Devlin*, *Official Committee of Unsecured Creditors of WorldCom, Inc. v. S.E.C.*, 467 F.3d 73 (2d Cir. 2006). Writing for the court, then-Judge Sotomayor outlined "two exceptions to the rule prohibiting nonparty appeals." *Id.* at 78. One, "a nonparty may appeal a judgment by which it is bound"—i.e., the fact pattern presented in *Devlin*. *Id.* (citing *Devlin*, 536 U.S. at 10). And two, a nonparty may appeal when "it has an interest affected by the judgment," affirming the earlier position that the Second Circuit had taken in the *Marino* proceedings. *Id.* (cleaned up).

Three other courts of appeals have taken a similar approach to that of the Second Circuit. The Sixth Circuit, for instance, has stated that "a nonparty may be sufficiently interested in a judgment to permit him or her to take an appeal from it." *McCormick v. Braverman*, 451

F.3d 382, 396 n.9 (6th Cir. 2006). Likewise, in *S.E.C. v. Enterprise Trust Co.*, 559 F.3d 649, 651 (7th Cir. 2009), the Seventh Circuit held that a nonparty may appeal when "judicial decision concludes the rights of the affected person, who cannot litigate the issue in some other forum." *Accord Shakman v. Clerk of Cir. Ct.*, 969 F.3d 810, 813 n.2 (7th Cir. 2020) (Barrett, J.) (citing *Enterprise Trust* when discussing "circumstances in which a litigant who is not a party below can be a party for purposes of appeal"). Finally, in the Tenth Circuit, a nonparty may appeal when they "have a sufficiently 'unique interest' in the subject matter of the case." *United States v. Osage Wind, LLC*, 871 F.3d 1078, 1084 (10th Cir. 2017) (citation omitted). To demonstrate that "unique interest," nonparties need not intervene; instead, the nonparty must only "demonstrate cause for why he did not or could not intervene in the proceedings below." *Id.* at 1086. In *Osage Wind*, for instance, the nonparty did not intervene because another party was already adequately representing the nonparty's interests before the district court. Only after that party "signaled it would not appeal" did the nonparty "act[] quickly to get involved in the case." *Id.* at 1085.

Another approach—closely related and taken by the Fourth, Eighth, and D.C. Circuits—permits nonparties to appeal when they "(1) possess[] 'an interest in the cause litigated' before the district court and (2) 'participate[] in the proceedings actively enough to make him privy to the record.'" *Doe v. Pub. Citizen*, 749 F.3d 246, 259 (4th Cir. 2014); *see also Curtis v. City of Des Moines*, 995 F.2d 125, 128 (8th Cir. 1993); *Broidy Cap. Mgmt. LLC v. Muzin*, 61 F.4th 984, 991 (D.C. Cir. 2023).

Other circuits have muddied the waters further, tacking on an inquiry into the balance of the equities. *See United States v. Stoerr*, 695 F.3d 271, 281 (3d Cir. 2012) (permitting "non-party appeals when '(1) the nonparty has a stake in the outcome of the proceedings that is discernible from the record; (2) the nonparty has participated in the proceedings before the district court; and (3) the equities favor the appeal.'"); *accord Sanchez v. R.G.L.*, 761 F.3d 495, 502 (5th Cir. 2014); *Home Prods. Int'l, Inc. v. United States*, 846 F. App'x 890, 894 (Fed. Cir. 2021).

At first glance, the Ninth Circuit's framework might read like some of these other approaches. As the panel outlined, "[a] non-party may have standing to appeal when" they have "participated in the district court proceedings" and "the equities of the case weigh in favor of hearing the appeal." App. 10a (cleaned up). But in actual application, this framework bars appeals that would have gone forward in many other courts.

That is because the common thread running through every other approach is that nonparties may appeal if they show an interest affected by the district court's judgment. That factor, Judge Bennett noted, would have "counsel[ed]" in Habelt's "favor," App. 24a, because Habelt does have "an interest affected by the judgment" here. *WorldCom*, 467 F.3d at 78 (internal quotation marks and ellipses omitted). Habelt, after all, seeks to revive a suit against a company he claims defrauded him. And there is no question, since iRhythm's misrepresentations caused Habelt's financial loss, that he has a clear stake in this appeal. *Mission Prod. Holdings, Inc. v. Tempnology, LLC*, 139 S. Ct. 1652, 1660 (2019) ("For better or worse, nothing so shows a continuing

stake in a dispute's outcome as a demand for dollars and cents."). Furthermore, Habelt may be precluded from pursuing another appeal by res judicata. And even if he is not literally bound by the district court's judgment, any claims brought in a subsequent lawsuit might be untimely.[2]

Thus, had Habelt filed his appeal in the Second, Sixth, Seventh, or Tenth Circuits, which focus on a nonparty's interest in the litigation, his case would have been heard on the merits. He would have also made headway in the Third, Fourth, Fifth, Eighth, D.C., and Federal Circuits, all of which consider a nonparty's interest as part of a multi-factor test. But the Ninth Circuit, unlike these other circuits, explicitly does not consider a nonparty's interest. Its overlooking of Habelt's stake here underscores exactly why this Court should grant review. Had Habelt sought review in any another circuit, the court of appeals would have at the very least carefully examined the interests affected if no appeal were available. Doing so favors hearing Habelt's claims, rather than—as in this case—leaving him with no practical forum to litigate.

---

[2] Respondents asserted at oral argument before the Ninth Circuit that Habelt was "not bound by the district court's judgment." App. 10a. But that is simply not a question that a defendant gets to answer. "[T]he preclusive effect of a prior judgment is," as Judge Bennett emphasized, "a determination generally made by the subsequent court." App. 23a (citing *Sonner v. Premier Nutrition Corp.*, 49 F.4th 1300, 1304 (9th Cir. 2022)). And in any event, Respondents also stated that, if Habelt tried to file another lawsuit, they "would move to dismiss claims barred by the statute of limitations." *Id.*

III. THE NINTH CIRCUIT ERRED IN DISMISSING HABELT'S APPEAL.

The Ninth Circuit's decision is incorrect because it (a) improperly inverts Rule 10, (b) creates administrability issues with the other Federal Rules, and (c) flouts a common-sense approach to handling nonparty appeals.

A. The decision below conflicts with the text and purpose of Rule 10(a).

To begin, Rule 10(a)'s requirement—that "[t]he title of the complaint must name all the parties"—reflects a broad and uncontroversial principle: plaintiffs must be clear about who they are and whom they are bringing suit against. With that principle in mind, "the pleading's caption" serves as a manifestation of the plaintiff's intent. *Jones v. Griffith*, 870 F.2d 1363, 1365–66 (7th Cir. 1989).

Framed thus, the view taken by most circuits—permitting a limited departure from Rule 10(a) to identify and add a proper defendant, generally in suits involving pro se or underrepresented plaintiffs—makes perfect sense. *See, e.g.*, *Mitchell v. Maynard*, 80 F.3d 1433, 1441 (10th Cir. 1996) ("[A] party not properly named in the caption of a complaint may still be properly before the court if the allegations in the body of the complaint make it plain the party is intended as a defendant."); App. 13a–14a n.5 (Bennett, J., dissenting).

After all, it would be entirely reasonable for courts to look past a caption of a pro se complaint if an absent party "is clearly identified as a defendant in the body of the complaint" because the plaintiff (1) may not know the defendants' "true identities," (2) may sue the wrong entity, or (3) may otherwise lack the information of a more sophisticated and well-represented party. *See* Steven S.

Gensler, 1 *Federal Rules of Civil Procedure, Rules and Commentary*, *Rule 10* (Feb. 2024 Update). Courts might in these circumstances "excuse technical pleading irregularities as long as they neither undermine the purpose of notice pleading nor prejudice the adverse party." *Phillips v. Girdich*, 408 F.3d 124, 128 (2d Cir. 2005). But while plaintiffs—pro se or otherwise—could "name[] the wrong defendant in the caption," *see Trackwell*, 472 F.3d at 1243–44, there is little reason to think they will misname themselves because, put simply, "plaintiffs draft complaints," *Abraugh*, 26 F.4th at 303.

Mapping these fundamental principles to this case reveals the Ninth Circuit's error. After its appointment, PERSM continued to list Habelt as a named plaintiff in the caption, consistent with Rule 10(a)'s instruction to "name all the parties." And after the district court entered judgment, PERSM consented to Habelt's appeal, an assent that would have been pointless to ask for and pointless to give if Habelt was not a party.

In the face of these facts, the panel here appeared to characterize Habelt's continued listing in the caption as a holdover from earlier pleadings, which PERSM simply forgot to change. That is, of course, one possible inference. But it is not the only one. There are several other legitimate, sensible reasons why counsel for lead plaintiffs would want to keep the original plaintiffs in an action. They may, for example, have borne in mind the Second Circuit's statement that "if the lead plaintiffs chose not to appeal and thus to abandon the case," other named plaintiffs in a securities action "could have pursued an appeal on their own behalf." *Cho v. Blackberry Ltd.*, 991 F.3d 155, 164 (2d Cir. 2021). Or, for that matter, that "the PSLRA does not in any way prohibit the addition of

named plaintiffs to aid the lead plaintiff in representing a class." *Hevesi v. Citigroup, Inc.*, 366 F.3d 70, 83 (2d Cir. 2004). And since "[f]or purposes of ruling on a motion to dismiss for want of standing, both the trial and reviewing courts must . . . construe the complaint in favor of the complaining party," the Ninth Circuit's decision to characterize the caption here as a scrivener's error rather than a deliberate action by counsel is particularly untenable. *Warth v. Seldin*, 422 U.S. 490, 501 (1975).

If all this were not enough, the district court's actions provide yet more evidence of Habelt's continuing party status. As Judge Bennett pointed out, the district court never gave "any notice that Habelt's party status was terminated"—which was likely required to satisfy due process *if* Habelt were, in fact, no longer a party to the case. App. 17a–18a (citing *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950), and *Peralta v. Heights Med. Ctr., Inc.*, 485 U.S. 80, 84 (1988)). To the contrary, up to the very end, the district court referred to Habelt as the "Plaintiff," and referred separately to PERSM as the "Lead Plaintiff," seemingly distinguishing between a lead plaintiff that is appointed under the PSLRA and a named plaintiff who remains a party to an action after a lead plaintiff is selected. *See* App. 42a.

In short, at every turn, Habelt held himself out as a party, PERSM treated him as a party, and the district court regarded him as one. Those circumstances, coupled with Habelt's listing in the caption per Rule 10(a), make his continued party status clear.[3]

---

[3] These circumstances also explain why PERSM's omission from the caption of the operative complaint does not compel a different result. There was, after all, no doubt as to the intent of either the

B. The decision below conflicts with other Federal Rules of Civil Procedure.

Outside the confines of Rule 10, "[t]he basic purpose of the Federal Rules is to administer justice through fair trials, not through summary dismissals" and "procedural booby traps." *Surowitz v. Hilton Hotels Corp.*, 383 U.S. 363, 373 (1966). Consistent with that purpose, courts are not to construe any individual rule in a manner that "fails to view it as part of the total procedural system." Wright & Miller, *supra*, § 1029. The decision below does just that, undermining the interplay between Rule 10 and three other Rules.

Start with Rule 8(e). Tracking *Surowitz*, that provision states that "[p]leadings must be construed so as to do justice." Fed. R. Civ. P. 8(e). Dismissing a suit by a named plaintiff on procedural grounds plainly fails to do justice—especially since Judge Bennett, the only circuit judge to examine the merits, held that Habelt had pleaded plausible allegations of securities fraud.

Consider next Rule 24, intervention. *See* App. 11a. As this Court has explained, "[i]ntervention is the requisite method for *a nonparty* to become a party to a lawsuit." *Eisenstein*, 556 U.S. at 933 (emphasis added). Because "a party to litigation is [o]ne by or against whom a lawsuit is brought," *Smith v. Bayer Corp.*, 564 U.S. 299, 313 (2011), Habelt was a party when he brought the suit. And he

---

court or the parties on PERSM's party status. The court appointed PERSM the lead plaintiff, and PERSM's counsel prepared and filed pleadings on behalf of the putative class after its appointment. At most, PERSM's omission from the caption tracks the limited expansion of Rule 10(a) taken by the Sixth Circuit: including parties left out of the caption, rather than excluding and stripping party status from parties named in the caption.

never received "notice that [his] party status was ever terminated." App. 17a (Bennett, J., dissenting). "No party took any action in the district court" to suggest Habelt relinquished his party status. *Id.* Under the Ninth Circuit's ruling, then, similarly situated plaintiffs must somehow know to intervene (and in fact intervene) to preserve their party status—without having any reason to believe they ever lost it.

The panel's reference to Rule 25, on party substitution, is similarly unavailing. To justify its decision to bypass Rule 10, the Ninth Circuit held up Rule 25 as "expressly contemplat[ing] that the caption of a complaint may be disconnected from the substance of the proceedings." App. 8a. True: Rule 25 does "expressly" give a court discretion to substitute one named party for another. But it "expressly" does so in four specific circumstances. Part (a) allows for substitution "[i]f a party dies" and part (b) provides for it "[i]f a party becomes incompetent"—not relevant here. Part (d) applies to public officers and officials. Again not relevant. The only plausible connection to this case is part (c), a transfer of interest. But even then, that provision favors Habelt, not the Ninth Circuit: "If an interest is transferred, the action may be continued by or against the original party unless the court, on motion, orders the transferee to be substituted in the action or joined with the original party." In other words, *if* Habelt's interests had been transferred to PERSM, then the "action may be continued by or against the original party"—i.e., Habelt—"*unless* the court, on motion, orders the transferee to be substituted in the action." Fed. R. Civ. P. 25(c) (emphasis added). No such motion was filed here.

The Ninth Circuit's decision, in short, not only makes a mess of Rule 10, but also invites courts to ignore Rules 8, 24, and 25.

C. The decision below's test for nonparty appeals is unsound.

Finally, the Ninth Circuit's handling of nonparty appeals contravenes *Devlin* and proves unworkable, especially following *China Agritech v. Resh*, 584 U.S. 732 (2018).

Devlin held that "nonnamed class members [were] parties for the purposes of bringing an appeal." 536 U.S. at 9. The animating principle behind that ruling was that nonparties to the proceeding below must retain "the power to preserve their own interests." *Id.* at 10. The Second, Sixth, Seventh, and Tenth Circuits' test for nonparty appellate standing is the most faithful interpretation and application of that animating principle. That is because, as *WorldCom* explains, if *Devlin* allows a nonparty to appeal "a judgment by which it is bound," then allowing a nonparty to appeal "if it has an interest affected by the judgment" simply represents a second, parallel exception. *WorldCom*, 467 F.3d at 78 (cleaned up); *see also Abeyta*, 664 F.3d at 796 ("*Plain* [*v. Murphy Family Farms*, 296 F.3d 975 (10th Cir. 2002)] and related cases thus stand for the principle that the *Devlin* exception to the *Marino* rule will only apply where the nonparty has a unique interest in the litigation and becomes involved in the resolution of that interest in a timely fashion.").

Prioritizing that requirement makes sense. If the nonparty has a stake in the outcome of a judgment, there are many reasons to allow them to appeal that judgment.

For one, allowing appeals from parties who have a personal stake preserves the adversarial process on which our system relies. It also serves judicial economy interests by consolidating actions into one suit, rather than forcing interested parties to refile duplicative actions of their own. And it promotes fairness to litigants and, in the context of private enforcement statutes like the PSLRA, encourages robust enforcement of the law.

The Ninth Circuit's attempt to carve out a separate test, disposing of a nonparty's interest to focus only on equities and participation, lacks merit for several reasons.

One, asking whether a nonparty has a "stake in the outcome," *City of Cleveland v. Ohio*, 508 F.3d 827, 837 (6th Cir. 2007), is both workable and administrable. Courts can readily determine the nonparty's affected interest—here, financial loss—and examine whether the nonparty has any other realistic forum for redress.

The same cannot be said about equitable balancing or participation. After all, "no principles have developed to guide the application of any of the key elements of equitable balancing." Jared A. Goldstein, *Equitable Balancing in the Age of Statutes*, 96 Va. L. Rev. 485, 524 (2013). The contrasting analyses here, indeed, illustrates the problems with grounding the test for nonparty standing on that element. For the majority, the equities weighed against Habelt because, "[u]nlike matters where a party has haled the non-party into the proceeding against his will," Habelt "willingly filed the initial complaint." App. 10a (internal quotation marks omitted) (internal quotation marks omitted). But Judge Bennett took an entirely different tack: "[T]he most important 'equity' [was] the lack of actual and clear notice to Habelt that, at some unknown point, he lost his party status and

thus his right to appeal." App. 22a (Bennett, J., dissenting). These approaches talk past one another, reflecting "[t]he absence of any formal principles for guiding [a] balance of equities" analysis. Goldstein, *supra* at 524.

Similarly, Habelt participated extensively below. He filed the complaint, hired counsel, investigated the relevant claims, and distributed notice to the putative class. He was "privy to the record" both before and, more importantly, after PERSM's appointment. *Doe*, 749 F.3d at 259; *Curtis*, 995 F.2d at 128. And though PERSM "was representing [Habelt's] interests" before the motion to dismiss ruling, Habelt "acted quickly to get involved in the case" after PERSM "signaled it would not appeal." *Osage Wind*, 871 F.3d at 1085. Yet the Ninth Circuit glossed over these facts, instead cherry-picking Habelt's purported lack of participation following the selection of a lead plaintiff, even though the district court, in making that selection, explicitly ordered "no other law firm [to] work on this action." App. 87a.

A nonparty's stake in litigation is—as outlined above and unlike equitable balancing and participation—far more discernible and easier to identify. That stake, moreover, is even more pronounced in securities cases like this one after *China Agritech.* There, this Court held that putative class members may not "commence a class action anew beyond the time allowed by the applicable statute of limitations" if an initial class action is denied certification. 584 U.S. at 735–36. Under that rule, class claims filed by absent members of the putative class may now be barred by the applicable statute of limitations, 28 U.S.C. § 1658(b), a point Respondents' counsel explicitly reinforced at oral argument, App. 23a (Bennett, J.,

dissenting). Indeed, post-*China Agritech*, several courts have declined to allow plaintiffs to file subsequent class actions regardless of whether a party in the initial action sought certification. *See, e.g.*, *Porter v. S. Nev. Adult Mental Health Servs.*, 788 F. App'x 525, 526 (9th Cir. 2019) ("*American Pipe* only tolls individual claims."); *Potter v. Comm'r of Soc. Sec.*, 9 F.4th 369, 375–76 n.4 (6th Cir. 2021).

So, in a world where a class action is the only viable way for an everyday investor like Habelt to vindicate his claims, this appeal may be his last real opportunity to have his day in court. The Ninth Circuit's aberrant test for nonparty standing allows it to bypass that practical reality. This Court should address that lapse and adopt the sensible approach taken by the Second, Sixth, Seventh, and Tenth Circuits.

IV. THIS CASE IS AN EXCELLENT VEHICLE TO RESOLVE IMPORTANT QUESTIONS DIVIDING THE FEDERAL COURTS.

The question presented here raises significant issues of federal jurisdiction, touching on two circuit splits. Both splits turn on purely legal issues: When a court can depart from Rule 10(a), and whether a court should consider the nonparty's stake in the outcome when evaluating appellate standing. Both have been addressed by the majority of the circuits, making further percolation unnecessary. Moreover, these splits carry far-reaching consequences.

Caption questions, for instance, plainly impact PSLRA cases. Had Habelt sued in the Second Circuit, where the court has declined to look past the caption to

determine plaintiff party status, *Hernandez-Avila*, 725 F.2d at 27–28, and has said that named plaintiffs may "pursue[] an appeal on their own behalf" when "the lead plaintiffs cho[o]se not to appeal," *Cho*, 991 F.3d at 164, the result here would have been different. The Second and Ninth Circuits "dominate class action securities fraud litigation, together resolving approximately 60% of all class action securities fraud claims." Joseph A. Grundfest, *Quantifying the Significance of Circuit Splits in Petitions for Certiorari: The Case of Securities Fraud Litigation* 1 (Stan. L. Sch. & Rock Ctr. for Corp. Governance Working Paper, Paper No. 254, 2024), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4768231. That these courts now diverge is a "particularly significant" conflict, "more worthy of *certiorari* than splits between any other two circuits" when it comes to enforcement of federal securities laws. *See id.*

The issues here also implicate matters beyond the PSLRA. Courts, for instance, apply "various tests" for nonparty appellate standing in many contexts, including ADA cases, *Kimberly Regenesis*, 64 F.4th at 1261–64; bankruptcy settlements, *Northview Motors*, 186 F.3d at 349; intellectual property disputes, *Microsystems Software, Inc. v. Scandinavia Online AB*, 226 F.3d 35, 41–43 (1st Cir. 2000); attorney's fees issues, *Curtis*, 995 F.2d at 128; and First Amendment disputes over rights of access to judicial documents, *Pub. Citizen*, 749 F.3d at 264.

This petition is an appropriate vehicle to address such issues. Addressing either split would revive this case. If the Court were to reject the Ninth Circuit's understanding of Rule 10(a), Habelt would be recognized as a party to the judgment below and have his appeal

heard on the merits. Should the Court instead address the second split, recognizing that the Second, Sixth, Seventh, and Tenth Circuits correctly identify interest in the underlying judgment as the touchstone for appellate party status, that would likewise pave the way for a merits review of Habelt's claims.

This case, in short, offers an excellent opportunity to give clarity on open questions of federal jurisdiction. It can restore fidelity to Rule 10, rather than allow courts of appeals to bypass the Rule to bar potentially meritorious claims. And it can address questions arising from *Marino* and *Devlin*, bringing clarity to a doctrinal gap that has vexed the circuits for the last two decades. That guidance can not only serve as the lynchpin for reopening this suit, but can also vindicate the interests of many other parties in other cases.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

JOSHUA B. SILVERMAN
OMAR JAFRI
JENNIFER PAFITI
JEREMY A. LIEBERMAN
CHRISTOPHER P.T. TOUREK
POMERANTZ LLP
10 S. LaSalle Street Ste. 3505
Chicago, IL 60603

JEFFREY C. BLOCK
JACOB WALKER
MARK BYRNE
BLOCK & LEVITON, LLP
260 Franklin Street Ste. 1860
Boston, MA 02110

XIAO WANG
Counsel of Record
UNIVERSITY OF VIRGINIA
SCHOOL OF LAW SUPREME
COURT LITIGATION CLINIC
580 Massie Road
Charlottesville, VA 22903
(434) 924-8956
x.wang@law.virginia.edu

Counsel for Petitioner

April 16, 2024