Nos. 15-961 & 15-962

In the Supreme Court of the United States

VISA, INC., ET AL., PETITIONERS

v.

SAM OSBORN, ET AL., RESPONDENTS

VISA, INC., ET AL., PETITIONERS

v.

MARY STOUMBOS, ET AL., RESPONDENTS

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND THE COMPETITIVE ENTERPRISE INSTITUTE AS *AMICI CURIAE* SUPPORTING PETITIONERS

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

CASES

STATUTE

OTHER AUTHORITIES

INTEREST OF *AMICI CURIAE*[1]

The Chamber of Commerce of the United States of America ("the Chamber") is the world's largest business federation. The Chamber represents 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus* briefs in cases such as this one that raise issues of vital concern to the Nation's business community.

The Competitive Enterprise Institute ("CEI") is a nonprofit 501(c)(3) organization, incorporated and headquartered in Washington, D.C., dedicated to promoting the principles of free markets and limited government. In particular, CEI focuses on raising public understanding of the problems of overregulation. Since its founding in 1984, CEI has been extensively involved in analyzing antitrust issues, in such areas as the abuse of antitrust laws, the setting of industry-wide standards, network economics, and the consumer benefits of widespread credit card availability. In furtherance of its positions, CEI has partici-

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[1] All parties have consented to the filing of this brief. Pursuant to Supreme Court Rule 37.6, no counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici*, their members, or their counsel made a monetary contribution intended to fund this brief's preparation or submission.

pated in a number of appellate and Supreme Court cases.

SUMMARY OF ARGUMENT

Pleading standards that distinguish procompetitive conduct from anticompetitive collusion are crucial to ensuring that the Sherman Act and other antitrust statutes are not used to deter or punish business activities that are essential to innovation and economic growth. The standard for pleading a horizontal conspiracy is among the most important of these standards because it serves a gatekeeping function that prevents antitrust actions—and the attendant threat of civil or criminal liability, treble damages, and sweeping injunctive relief—from undermining legitimate ventures by exposing them to costly litigation over implausible or unmeritorious claims.

The Court of Appeals here held that Respondents adequately pled a horizontal conspiracy against the petitioner banks and their (then wholly controlled) bank card associations, Visa and MasterCard, on the theory that the banks "used" the "associations to adopt and enforce [an allegedly] supracompetitive pricing regime for ATM access fees." *Osborn* v. *Visa Inc.*, 797 F.3d 1057, 1067 (D.C. Cir. 2015) (emphasis omitted). Petitioners explain why these particular allegations "stop short of the line between possibility and plausibility of entitlement to relief." *Bell Atl. Corp.* v. *Twombly*, 550 U.S. 544, 557 (2007) (quotation marks and brackets omitted); see Petrs. Br. 22–40. This submission endeavors to address the significance of the contested Section 1 pleading standard to lawful activities beyond the facts of this case.

As this Court has explained, Section 1 draws a "basic distinction between concerted and independent action," the latter of which "is not proscribed." *Monsanto Co.* v. *Spray-Rite Serv. Corp.*, 465 U.S. 752, 761 (1984). "The meaning of the term contract, combination * * * or conspiracy is informed by this basic distinction in the Sherman Act between concerted and independent action that distinguishes § 1 of the Sherman Act from § 2." *Am. Needle, Inc.* v. *Nat'l Football League*, 560 U.S. 183, 190 (2010) (internal quotation marks and citations omitted). To plead "concerted action"—as distinct from independent parallel conduct or lawful cooperation—a Section 1 plaintiff must plead facts that, taken as true, show the defendants' "conscious commitment to a common scheme designed to achieve an *unlawful objective*." *Monsanto*, 465 U.S. at 764 (emphasis added).

A mere allegation that independent entities cooperate to support—or in the Court of Appeals' terms "agree[]" upon—rules or standards falls short of this requirement. Yet the decision below allows precisely such allegations to expose any number of ventures to the overwhelming burden of antitrust discovery. In doing so the decision departs from settled precedents and exposes lawful collaborators across industries to crippling litigation risk the law does not contemplate and American enterprise can ill afford.

The Court should reverse and instruct the federal appellate and district courts that to survive a motion to dismiss, Section 1 plaintiffs must plead plausible facts that distinguish lawful cooperation from unlawful conspiracies.

ARGUMENT

I. The Decision Below Improperly Threatens Lawful and Procompetitive Business Conduct.

The prospect of "sprawling, costly, and hugely time-consuming" Section 1 litigation can deter the very procompetitive business activities the antitrust laws were designed to protect. *Twombly*, 550 U.S. at 560 n.6. Recognizing this, *Twombly*'s "plausibility" standard balances the Sherman Act's scrutiny of concerted action with the Act's goal of "evolv[ing] to meet the dynamics of present economic conditions," *Leegin Creative Leather Prods., Inc.* v. *PSKS, Inc.*, 551 U.S. 877, 899 (2007), including those that require competitors to work together to ensure product interoperability or develop other important rules or standards. *Twombly*, 550 U.S. at 556–557.

The D.C. Circuit's decision upsets this critical balance. The court's opinion emphasizes that the challenged association rules here were adopted when "[b]oth Visa and MasterCard were owned and operated as joint ventures by a large group of retail banks" that included Petitioners. Pet. App. 7a; see also *id.* at 18a (the rules were adopted when member "banks controlled Visa and MasterCard"). But it does not adequately assess whether the rules were the product of "concerted action" at the time of their adoption or otherwise.

The D.C. Circuit began by observing that allegations of a "horizontal restraint" of trade in violation of Section 1 of the Sherman Act are "sufficient if they contain 'enough factual matter (taken as true) to suggest that *an agreement* was made.'" Pet. App. 18a

(emphasis added) (quoting *Twombly*, 550 U.S. at 556). But it did not assess whether the defendants' alleged collective conduct actually rose to the level of "agreement" in the sense Section 1 requires. Instead, it treated the conclusory allegation that the petitioner banks "agreed" to the challenged network rules, Pet. App. 20a–21a, as a proxy for "concerted action" and concluded that the purportedly "supracompetitive" nature of the rules rendered Respondents' Section 1 allegations "sufficient" to state a claim and proceed to discovery. *Id.* at 20a.

The Court of Appeals' failure to assess whether the challenged rules were the product of "concerted action" rather than lawful collaboration was an error that, left uncorrected, will threaten a range of lawful activities. And the rules' allegedly "supracompetitive" nature does not change or excuse that. Pet. App. 20a. Many industry rules and standards—whether they involve patents, safety protocols, or market capitalization or similar risk mitigation requirements—have price or exclusionary effects incident, if not essential, to their legitimate mandates. That is *not* enough to subject them to Section 1 scrutiny. As this Court explained in *Twombly*: Section 1 prohibits "only restraints effected by a *contract, combination, or conspiracy*." 550 U.S. at 553 (internal quotation marks omitted; emphasis added).[2]

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[2] "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal." 15 U.S.C. § 1.

The court below purported to acknowledge this critical limit on Section 1 claims in citing the need for "functional consideration" of how entities accused of a Section 1 violation "actually operate." Pet. App. 19a; see also *id*. at 20a (conceding that "mere membership in associations is not enough to establish participation in a conspiracy" (brackets omitted)). But it went on to hold—with virtually no elaboration—that allegations that companies "*used* [an] association[] to adopt and enforce [an allegedly] supracompetitive pricing regime" are "enough to satisfy the plausibility standard." *Id*. at 20a–21a (citing Respondents' allegation that the challenged rules "originated in the rules of the former bankcard associations *agreed to by the banks themselves*" (emphasis in original)).

This approach disregards this Court's admonition that a Section 1 complaint must plead "allegations plausibly suggesting (not merely consistent with)" an unlawful conspiracy. *Twombly*, 550 U.S. at 557. Section 1 conspiracies require more than just allegations of collaboration or collective action; they require factual allegations of a "conscious commitment to a common scheme designed to achieve an *unlawful objective*." *Monsanto*, 465 U.S. at 764 (emphasis added). Absent such allegations, even joint venture conduct that imposes price restraints does not implicate Section 1. See, *e.g.*, *Texaco Inc.* v. *Dagher*, 547 U.S. 1, 6 (2006) (observing that a joint venture's "pricing policy may be price fixing in a literal sense," but "is not price fixing in the antitrust sense").

In suggesting otherwise, the opinion below subjects lawful ventures to the formidable threat of antitrust discovery, and thus risks "chill[ing] the very conduct the antitrust laws are designed to protect,"

Matsushita Elec. Indus. Co. v. *Zenith Radio Corp.*, 475 U.S. 574, 594 (1986), and creating "irrational dislocation[s] in the market," *Monsanto*, 465 U.S. at 764. The importance of this deviation from settled Section 1 pleading standards cannot be overstated. Antitrust suits and class actions are proliferating in financial services and other industries in which "[j]oint ventures and strategic alliances are an increasingly important mechanism for growth." *E.g.*, Kimberly Gleason et al., *Evidence of Value Creation in the Financial Services Industry Through the Use of Joint Ventures and Strategic Alliances*, 38 The Fin. Review 213, 214 (2003); John Terzaken, *A New Era of Antitrust Enforcement*, The New York Times Dealbook (Feb. 18, 2014).[3] A Section 1 pleading standard that subjects companies in such markets to antitrust discovery based on conclusory allegations that they "used" associations to enact rules or standards that have some price or exclusionary effect will undeniably deter industry cooperation in these and many other markets. See, *e.g.*, *United States* v. *U.S. Gypsum Co.*, 438 U.S. 422, 441 (1978) ("[S]alutary and procompetitive conduct * * * might be shunned by businessmen who chose to be excessively cautious in the face of uncertainty.").

The same is true with respect to industry-specific standard setting. As the Federal Trade Commission and U.S. Department of Justice observed in a joint report on antitrust considerations with patent pooling and licensing ventures (the "Joint Report"):

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[3] Available at http://dealbook.nytimes.com/2014/02/18/a-new-era-of-antitrust-enforcement/

> Industry standards are widely acknowledged to be one of the engines driving the modern economy. Standards can make products less costly for firms to produce and more valuable to consumers. They can increase innovation, efficiency, and consumer choice; foster public health and safety; and serve as a fundamental building block for international trade. Standards make networks, such as the Internet and wireless telecommunications, more valuable by allowing products to interoperate.[4]

The Joint Report goes on to make three observations relevant to the pleading analysis here. First, "[t]he most successful standards are often those that provide timely, widely adopted, and effective solutions to technical problems."[5] Second, "[b]y agreeing on an industry standard, firms may be able to avoid many of the costs and delays of a standards war, thus substantially reducing transaction costs to both consumers and firms."[6] Third, courts faced with antitrust challenges to industry standards or standard-setting bodies have "found antitrust liability in circumstances involving the *manipulation of the standard-setting process* or the *improper use of the resulting standard* to gain competitive advantage over rivals."[7]

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[4] DOJ & FTC, *Antitrust Enforcement and Intellectual Property Rights: Promoting Innovation and Competition* 33 (2007) (footnotes and quotation marks omitted), available at www.usdoj.gov/atr/public/hearings/ip/222655.pdf

[5] *Id.*

[6] *Id.* at 34.

[7] *Id.* at 34–35 (emphasis added).

Consistent with these observations, courts and regulators across jurisdictions and administrations have calibrated their antitrust enforcement efforts to account for lawful association and joint venture activity in areas ranging from "electrical plugs and outlets"[8] to "tires," "printer cartridges," and "wireless communications."[9] As these authorities recognize, "many industries turn to collaborative development through standards setting organizations" because allowing standards to "arise de facto in the marketplace" may retard "R&D" and result in poorer "technical standards."[10] It is thus no surprise that federal antitrust guidelines recognize that cooperation is often essential to provide industry participants with affordable access to the intellectual property necessary to meet industry standards and sell multi-component products,[11] or that the Justice Depart-

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[8] Remarks of Deborah Platt Majoras, Chairman, Federal Trade Commission, *Recognizing the Procompetitive Potential of Royalty Discussions in Standard Setting* 2 (Sept. 23, 2005), available at https://www.ftc.gov/sites/default/files/documents/public_statements/recognizing-procompetitive-potential-royalty-discussions-standard-setting/050923stanford.pdf

[9] Opening Remarks of Commissioner Edith Ramirez, Federal Trade Commission Workshop on Intellectual Property Rights in Standard Setting 1–2 (June 21, 2011), available at https://www.ftc.gov/sites/default/files/documents/public_statements/opening-remarks-commissioner-edith-ramirez/110621ssowkshp.pdf

[10] *Id*. at 2 & n.2 (citing authorities).

[11] DOJ & FTC, *Antitrust Guidelines for the Licensing of Intellectual Property* § 5.5 (Apr. 6, 1995) ("These [cross-licensing and patent-pooling] arrangements may provide procompetitive benefits by integrating complementary technologies, reducing trans-

ment routinely approves such arrangements through Business Review Letters. See, *e.g.*, DOJ Business Review Letters concerning the: 3G patent platform[12]; patent policies update of the IEEE Standards association[13]; MPEG-2 technology[14]; and RFID Consortium.[15]

The same type of collaboration has allowed the Nation's telecommunications systems to evolve and grow following the AT&T divestiture. See Herbert Hovenkamp, *Exclusive Joint Ventures and Antitrust Policy*, 1995 Colum. Bus. L. Rev. 1, 11 (1995). And as Petitioners explain and federal courts have long recognized, global debit, credit and banking systems would not exist but for joint ventures and standard setting cooperation among competing financial insti-

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action costs, clearing blocking positions, and avoiding costly infringement litigation. By promoting the dissemination of technology, cross-licensing and pooling arrangements are often procompetitive."), available at https://www.justice.gov/atr/antitrust-guidelines-licensing-intellectual-property

[12] Letter from Charles A. James to Ky P. Ewing, Esq. (Nov. 12, 2002), available at https://www.justice.gov/archive/atr/public/busreview/200455.htm

[13] Letter from Renata B. Hesse to Michael A. Lindsay, Esq. (Feb. 2, 2015), available at https://www.justice.gov/atr/response-institute-electrical-and-electronics-engineers-incorporated

[14] Letter from Joel I. Klein to Gerrard R. Beeney, Esq. (June 26, 1997), available at https://www.justice.gov/archive/atr/public/busreview/215742.htm

[15] Letter from Thomas O. Barnett to William F. Dolan & Geoffrey Oliver (Oct. 21, 2008), available at https://www.justice.gov/atr/response-rfid-consortium-llcs-request-business-review-letter

tutions. See, *e.g.*, Petrs. Br. 2–6; *Nat'l Bancard Corp. (NaBanco)* v. *VISA U.S.A., Inc.*, 779 F.2d 592, 602 (11th Cir. 1986) (recognizing that "none of [Visa's] members could produce [the Visa card] individually"); *Broadcast Music, Inc.* v. *Columbia Broadcasting Sys., Inc.*, 441 U.S. 1, 23 (1979) ("Joint ventures and other cooperative arrangements are also not usually unlawful, at least not as price-fixing schemes, where the agreement on price is necessary to market the product at all."); *Nat'l Collegiate Athletic Ass'n* v. *Bd. of Regents of the Univ. of Okla.*, 468 U.S. 85, 102 (1984) (emphasizing the importance of joint ventures and associations in "enabl[ing] a product to be marketed which might otherwise be unavailable").

As the Joint Report observed nearly a decade ago, "[h]undreds of collaborative standard-setting groups operate worldwide, with diverse organizational structures and rules." Joint Report, *supra* n.4, at 33 n.5 (citing authorities). These organizations are even more important and diverse today. See *id*. To provide benefits essential to innovation and economic growth, they must "have the discretion" to make their core business decisions on the merits, free from the improper threat of antitrust liability. *Dagher*, 547 U.S. at 7.

II. The Court Should Clarify Section 1 Plaintiffs' Pleading Burden.

Antitrust suits—like the class actions that antitrust complaints increasingly embrace—pose a high "risk of 'in terrorem' settlements" that extinguish any opportunity for defendants to vindicate their conduct in merits litigation. *AT&T Mobility LLC* v. *Concepcion*, 563 U.S. 333, 350 (2011). As this Court has recognized, "antitrust discovery can be expensive" and

involve "massive factual controvers[ies]," so the "threat of discovery expense will push cost-conscious defendants to settle even anemic cases before reaching [merits] proceedings." *Twombly*, 550 U.S. at 558–559.[16] Accordingly, it is especially important for the Court to resolve this case in a manner that explains what Section 1 plaintiffs must plead to take conspiracy "claims across the line from conceivable to plausible" in association cases. *Id.* at 570.

The Court should begin by reaffirming that horizontal competitors' mere "use" of associations to cooperate on or pursuant to "agreed" rules or standards—including those that restrict price or output—is not sufficient to state a Section 1 claim. The plaintiff must plead facts that make an "*illegal* agreement" more "plausible" than lawful collaboration in furtherance of legitimate interests. *Twombly*, 550 U.S. at 556–557 (emphasis added); see *Dagher*, 547 U.S. at 6. To do that, the complaint must plead some "further circumstance pointing toward a meeting of the minds" on an unlawful restraint. *Id.* at 557–558; *Monsanto*, 465 U.S. at 768 (Section 1 violation requires allegations, and ultimately proof, of a "conscious commitment to a common scheme designed to achieve an unlawful objective"); *AD/SAT, a Div. of Skylight, Inc.* v. *Associated Press*, 181 F.3d 216, 234 (2d Cir. 1999) (Section 1 plaintiff must plead and ultimately prove facts sufficient to show that "associa-

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[16] See also *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 784 (3d Cir. 1995) ("[C]lass actions create the opportunity for a kind of legalized blackmail.").

tion members, in their individual capacities, consciously committed themselves to a common scheme designed to achieve an unlawful objective").

Precedents from this Court and others offer a number of benchmarks for such additional conduct. *American Needle* observed that "a legally single entity violate[s] [Section] 1 when the entity [i]s controlled by a group of competitors and serve[s], in essence, as a vehicle for ongoing concerted activity." 560 U.S. at 191. "The relevant inquiry, therefore, is whether there is a contract, combination * * * or conspiracy amongst separate economic actors pursuing separate economic interests, such that the agreement deprives the marketplace of independent centers of decisionmaking, and therefore of diversity of entrepreneurial interests." *Id.* at 195 (internal quotation marks and citations omitted). This standard is not met where an antitrust plaintiff's allegations of cooperation among association or joint venture members are "just as consistent with unilateral action as with concerted actions." Petrs. Br. 19. Absent factual allegations that the challenged cooperation "depriv[ed] the marketplace of independent centers of decisionmaking," such allegations do not plead "an agreement" among members that "constitute[s] a contract, combination * * * or conspiracy for the purposes of § 1." *Am. Needle*, 560 U.S. at 194 (internal quotation marks and citations omitted).

The Court of Appeals did not engage in this or any other adequate analysis of the challenged conduct here. Under the Court of Appeals' conclusory approach, many of the important collaborative ventures described above would face unwarranted antitrust scrutiny for pursuing common interests and stand-

ards, rather than for serving as vehicles for unlawful collusion among "separate economic actors pursuing separate economic interests." *Id.* at 195; see generally *In re Ins. Brokerage Antitrust Litig.*, 618 F.3d 300, 349 (3d Cir. 2010) (dismissing claims against trade association members because the complaint did not plead facts plausibly suggesting that "each broker acted *other than independently* when it decided to incorporate the [trade group's] proposed approach") (emphasis added). This Court should correct that error and reiterate the importance of assessing allegations of concerted action in a rigorous and "functional" way. *Id.* at 191. The association and joint venture activities described in Part I illustrate situations in which cooperation among competitors and some "restraints on competition are essential if [a product or standard] is to be available at all." *Am. Needle*, 560 U.S. at 203 (internal quotation marks and citations omitted). In such circumstances, courts must carefully assess whether a Section 1 plaintiff has adequately pled a plausible case of concerted action. And even where a complaint contains such allegations, courts must remain mindful that "per se rules of illegality are inapplicable, and instead the restraint must be judged according to the flexible Rule of Reason." *Id.*

This Court has highlighted the factual allegations—notably of association member *subversion* or *abuse* of standards—that distinguish reasonable agreements from "unreasonable and therefore illegal" concerted action in association and joint venture cases. *Id.* at 196.

Allied Tube and *Hydrolevel* are instructive, because both cases involved what the Joint Report de-

scribes as "*manipulation* of the standard-setting process or the *improper use* of the resulting standard to gain competitive advantage over rivals." See Joint Report, *supra* n.4, at 35 & n.10 (emphasis added). In *Allied Tube*, this Court affirmed a jury verdict finding Section 1 liability where the defendant had met with its competitors, collectively agreed with them to seek to exclude the plaintiff's product from the applicable industry standard, and recruited and paid for hundreds of individuals to attend the annual meeting of the standard-setting association solely to vote to exclude the plaintiff's product. *Allied Tube & Conduit Corp.* v. *Indian Head, Inc.*, 486 U.S. 492, 495–498 (1988). These efforts to "subvert the consensus standard-making process of the Association" implicated Section 1. *Id.* at 498. Similarly, in *Hydrolevel*, this Court affirmed a judgment against a trade association where an association subcommittee plotted with a member to use the procedures of the association to disadvantage a competing manufacturer, including by *misrepresenting* whether the competitor's product complied with association safety standards. *Am. Soc. of Mech. Eng'rs, Inc.* v. *Hydrolevel Corp.*, 456 U.S. 556, 560–564 (1982).[17]

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[17] Various appellate court decisions have likewise allowed Section 1 claims against association members to proceed based on factual allegations that the defendants subverted or otherwise abused normal association or joint venture processes for their own anticompetitive purposes. See, *e.g.*, *SD3, LLC* v. *Black & Decker (U.S.), Inc.*, 801 F.3d 412, 420, 430, 433–434 (4th Cir. 2015); *Name.Space, Inc.* v. *Internet Corp. for Assigned Names & Numbers*, 795 F.3d 1124, 1129–1130 (9th Cir. 2015); *DM Research, Inc.* v. *College of Am. Pathologists*, 170 F.3d 53, 54, 57–58 (1st Cir. 1999).

As noted, the Court need not reach the question whether the claims here plead an unreasonable restraint of trade because they fail adequately to plead the "antecedent" requirement of concerted action. See *Am. Needle*, 560 U.S. at 186. *Amici* highlight the foregoing cases simply to emphasize that even where concerted action is adequately pled, allegations of such conduct are not sufficient to state a Section 1 claim absent factual allegations that the concerted action "unreasonabl[y]" restrained trade. *Id.*; see also *Allied Tube*, 86 U.S. at 495–498; *Hydrolevel*, 456 U.S. at 560–564; *supra* n.17.

The Sherman Act does not, and should not, expose business ventures to the staggering costs of antitrust discovery in cases that do not adequately allege both concerted action and facts showing or supporting a plausible inference of unreasonable and unlawful restraints on competition. The Court of Appeals purported to recognize this principle, but failed to apply it in holding that the mere "use[]" of an association to "adopt and enforce a supracompetitive pricing regime" was "enough to satisfy [*Twombly*'s] plausibility standard" for a Section 1 conspiracy. Pet. App. 20a–21a.

Allegations that remain "merely consistent with" concerted action in restraint of trade "stop[] short of the line between possibility and plausibility" of entitlement to relief. *Twombly*, 550 U.S. at 557. Accordingly, Section 1 plaintiffs should be required to plead, first and foremost, factual allegations that association members "conscious[ly] commit[ted]" themselves to a "common scheme designed to achieve an *unlawful objective*," *Monsanto*, 465 U.S. at 764 (emphasis added), *i.e.*, these plaintiffs must plead "some evi-

dence of [association members'] actual knowledge of, and participation in, [an] *illegal scheme*" as distinct from legitimate organizational activity. *AD/SAT*, 181 F.3d at 234 (emphasis changed). Plaintiffs who adequately plead such conduct must then plausibly allege that the concerted action restrained trade in a way that is "unreasonable and therefore illegal." *Am. Needle*, 560 U.S. at 196. This approach would preserve the distinction this Court and others have long and rightly recognized between lawful cooperation and unlawful conspiracies.

CONCLUSION

For the foregoing reasons, the Court should reverse the judgment below.

Respectfully submitted.

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