No.

In the Supreme Court of the United States

PARKER-HANNIFIN CORPORATION, ET AL.,
PETITIONERS

v.

MICHAEL D. JOHNSON, ET AL.

**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Sixth Circuit**

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Under the Employee Retirement Income Security Act (ERISA), retirement plan fiduciaries have a duty to remove imprudent investments from their plan within a reasonable time. *Hughes* v. *Nw. Univ.*, 595 U.S. 170, 176 (2022). In deciding whether a complaint adequately pleads an imprudent-investment claim, "courts must give due regard to the range of reasonable judgments a fiduciary may make based on her experience and expertise." *Id.* at 177.

The question presented is:

Whether pleading an imprudent-investment claim under ERISA, based on how the investment's returns compared to some performance benchmark, requires allegations showing that the benchmark is a sound basis for comparison for that investment.

PARTIES TO THE PROCEEDING

Petitioners Parker-Hannifin Corporation, the Board of Directors for Parker-Hannifin Corporation, the Human Resources and the Compensation Committee of the Board of Directors for Parker-Hannifin Corporation, and the Parker Total Rewards Administration Committee were defendants in the district court and appellees in the court of appeals.

Respondents Michael D. Johnson, Matthew Collaro, John M. Berg, Mallikarjun B. Kandula, and Tyler L. Seamons were plaintiffs in the district court and appellants in the court of appeals.

CORPORATE DISCLOSURE STATEMENT

Parker-Hannifin Corporation has no parent corporation, and no publicly held company owns 10% or more of its stock.

RELATED PROCEEDINGS

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

Johnson v. *Parker-Hannifin Corp.*, No. 21-cv-256 (Dec. 4, 2023)

United States Court of Appeals (6th Cir.):

Johnson v. *Parker-Hannifin Corp.*, No. 24-3014 (Feb. 12, 2025)

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INTRODUCTION

Before this case, there was a broad consensus that plaintiffs cannot state a claim under the Employee Retirement Income Security Act (ERISA) just by alleging that their retirement plan investment earned lower returns over some period than another investment. Different investments have different characteristics, which sometimes lead to different returns. For example, in a bull market, riskier equity investments may outperform lower-risk bonds. But that does not mean it is imprudent to allow retirees to invest in the less risky investment. So, when a plaintiff tries to state an ERISA claim by comparing investments, courts have held that the "key" to a plausible claim is "a sound basis for comparison—a meaningful benchmark." *Matousek* v. *MidAmerican Energy Co.*, 51 F.4th 274, 278 (8th Cir. 2022) (citation omitted); see also, *e.g.*, *Albert* v. *Oshkosh Corp.*, 47 F.4th 570, 581-582 (7th Cir. 2022); *Matney* v. *Barrick Gold of N. Am.*, 80 F.4th 1136, 1153-1155 (10th Cir. 2023).

But here, a divided Sixth Circuit panel broke from that consensus, over Judge Murphy's forceful dissent. The majority held that "a meaningful benchmark is not required to plead a facially plausible claim." App., *infra*, 19a. Then, as an alternative holding, the majority announced an unprecedented, trivially easy-to-satisfy test for identifying meaningful benchmarks and ruled that respondents pleaded one in this case. The Court should grant certiorari for three reasons.

First, the Sixth Circuit "create[d] a circuit split" by rejecting the meaningful-benchmark requirement for a claim that rested on investments' comparative performance. App., *infra*, 54a (Murphy, J., dissenting). And the majority's alternative holding itself "conflicts" with precedent outside the Sixth Circuit, *id.* at 56a, creating a new meaningful-benchmark test that no competently pleaded complaint could flunk. "[O]ther courts would have dismissed [respondents'] claim for failing to show that the alternative options were 'meaningful' comparators to the challenged funds." *Id.* at 34a (citation omitted). A circuit split on this fundamental question about ERISA pleading standards is intolerable—particularly when ERISA's purpose is to create "a uniform body of benefits law." *Rutledge* v. *Pharm. Care Mgmt. Ass'n*, 592 U.S. 80, 86 (2020).

Second, the Sixth Circuit was wrong to eliminate the meaningful-benchmark requirement. That requirement follows naturally from this Court's case law, including its recognition that ERISA fiduciaries often face "difficult tradeoffs" and may lawfully choose from a "range of reasonable judgments." *Hughes* v. *Nw. Univ.*, 595 U.S. 170, 177 (2022). The Sixth Circuit's new regime effectively eliminates this zone of reasonableness and compels fiduciaries to single-mindedly chase the highest returns. In doing so, it eliminates an important, commonsense guardrail for these types of cases. ERISA class actions impose immense, asymmetrical litigation costs that pressure rational defendants to settle even when the claims lack merit. The motion to dismiss is an "important mechanism for weeding out meritless claims." *Fifth Third Bancorp* v. *Dudenhoeffer*, 573 U.S. 409, 425 (2014). But it cannot fulfill that role if no claims get weeded out and no defendant escapes classwide discovery. The predictable effect of this abusive and burdensome litigation will be that employers scale back their commitments to retirement plans, which is precisely what ERISA's creators sought to avoid. *E.g.*, *Conkright* v. *Frommert*, 559 U.S. 506, 516-517 (2010).

Third, the Court should resolve this circuit split now. This case is an excellent vehicle to do so, and the courts of appeals have had ample opportunity to consider these questions. Further percolation is not necessary—and may not even be possible. Retirement-plan class actions are often filed by a few repeat-player plaintiffs' firms, which now have little reason to invest in new cases in the Seventh, Eighth, or Tenth Circuits where they would have to clear a real pleading hurdle. It is much easier to bring cases in the Sixth Circuit where complaints face no such hurdle or in circuits without appellate precedent where the Sixth Circuit's decision can be held up as the latest circuit ruling. Defendants have no realistic way to appeal a denial of a motion to dismiss, so this Court may not get another opportunity to resolve this conflict. This Court should do so here and reject the Sixth Circuit's flawed outlier position.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-68a) is reported at 122 F.4th 205. The opinion of the district court (App., *infra*, 69a-96a) is not published in the Federal Supplement but is available at 2023 WL 8374525.

JURISDICTION

The judgment of the court of appeals was entered on November 20, 2024. A petition for rehearing en banc was denied on February 12, 2025 (App., *infra*, 97a-98a). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

Pertinent statutory provisions are reproduced in the appendix to this petition. App., *infra*, 99a.

STATEMENT

A. Legal background

ERISA is "a comprehensive statute for the regulation of employee benefit plans." *Aetna Health Inc.* v. *Davila*, 542 U.S. 200, 208 (2004). It reflects a "careful balancing" of occasionally competing goals. *Id.* at 215 (citation omitted). On the one hand, Congress sought to ensure that employees receive the benefits they earned. *Conkright* v. *Frommert*, 559 U.S. 506, 516 (2010). But at the same time, Congress did not want to deter employers from offering employee benefits in the first place by enacting a statute "so complex that administrative costs, or litigation expenses, unduly discourage employers from offering ERISA plans." *Id.* at 517 (citation and brackets omitted).

ERISA imposes a duty of prudence on plan fiduciaries: a fiduciary must "discharge his duties with respect to a plan * * * with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims." 29 U.S.C. 1104(a)(1)(B). Plan participants may seek relief for breaches of this fiduciary duty. 29 U.S.C. 1132(a)(2)-(3). And fiduciaries are "personally liable to make good to [the] plan any losses to the plan resulting from each such breach." 29 U.S.C. 1109(a).

B. Facts and procedural history

1. Parker-Hannifin Corporation sponsors the Parker Retirement Savings Plan (the Plan), a defined contribution plan that helps employees save for retirement through individual accounts. App., *infra*, 2a-3a; see 29 U.S.C. 1002(34). "[I]n a defined-contribution plan, such as a 401(k) plan, the retirees' benefits are typically tied to the value of their accounts." *Thole* v. *U.S. Bank N.A.*, 590 U.S. 538, 540 (2020). Plan participants choose how to invest the money in their accounts by choosing from a menu of investment options selected by plan administrators. *Hughes* v. *Nw. Univ.*, 595 U.S. 170, 173 (2022). The ultimate amount of retirement money available to participants turns on the contributions made to their accounts (including matching contributions from the employer) and the performance of their investments. App., *infra*, 3a; Am. Compl. ¶ 13.

Among other investment options, the Plan enabled participants to invest in a series of target date funds. App., *infra*, 3a-4a. Target date funds are designed for "participants who do not want to actively manage" a portfolio of investments over time and would rather choose a "single" fund that handles the underlying investment management for them, based on an anticipated retirement date. Am. Compl. ¶ 46;

see App., *infra*, 4a. They are intended to be long-term investments held either until the investor retires (if the fund is "to" retirement) or even longer (if the fund is "through" retirement). Am. Compl. ¶¶ 45, 49. As the investment horizon draws nearer, the fund's managers gradually rebalance the fund's asset allocation to become more conservative—shifting from riskier equity investments to lower-risk alternatives like bonds or other fixed-income investments. Am. Compl. ¶ 47. The asset allocation represents one of "the most essential components of a target date fund" and can have a "profound" impact on investment return. Am. Compl. ¶¶ 50, 52.

Before February 2014, the target date funds available to Plan participants were the Fidelity Freedom Funds. App., *infra*, 6a. Then the Plan switched its target date funds option to the Northern Trust Focus Funds (the "Focus Funds"). *Ibid.* In September 2019, the Plan replaced the Focus Funds as its target date fund option. See *ibid.*

2. Respondents are five individuals who allegedly participated in the Plan while employed by Parker-Hannifin Corporation. App., *infra*, 2a. They seek to represent a putative class of all Plan participants and beneficiaries from January 29, 2015 through the date of judgment. Am. Compl. ¶ 110.

As relevant here, respondents contend that petitioners breached ERISA's fiduciary duty of prudence by retaining the Focus Funds for too long. App., *infra*, 8a. Their principal allegation was that the Focus Funds' alleged deficiencies resulted in "underperformance relative to well-established, prudently managed, comparable target date funds that were available to the Plan." Am. Compl. ¶ 4. In particular, respondents compared the Focus Funds' three-year trailing returns as of 2013 or five-year returns as of 2015 to those of three other target date funds: the Vanguard Target Retirement Trust Plus funds, the TIAA-CREF Lifecycle Index Funds, and the T. Rowe Price Retirement Funds. Am. Compl. ¶¶ 70-81. Respondents also compared the Focus Funds' performance between 2011 and 2014 to the performance of the S&P target date fund benchmark. Am. Compl. ¶¶ 68-69, 86.[1]

3. The district court dismissed the action. App., *infra*, 95a. It found respondents' allegations about the Focus Funds' underperformance insufficient under Sixth Circuit precedent and other circuits' precedent. *Id.* at 80a-89a.

The district court recognized that respondents were seeking to raise an inference of imprudence based on the Focus Funds' performance compared to the performance of alternative investments. App., *infra*, 81a. To raise such an inference, a plaintiff must show that the plan investments and the comparator

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[1] Respondents also rely on these allegations to claim that certain petitioners breached their obligation to monitor other Plan fiduciaries. Am. Compl. ¶¶ 129-136. All agree that these failure-to-monitor allegations are derivative of respondents' other underlying claims. App., *infra*, 31a. In addition, respondents asserted a claim based on allegations that the Plan did not offer certain investment options in the share-class charging investors the cheapest amount of fees. *Id.* at 6a-8a. Petitioners do not seek review of the Sixth Circuit's ruling on respondents' share-class claim.

funds share the same investment strategies, risk profiles, and objectives. *Id.* at 81a-82a. This requirement ensures that the comparators constitute a "meaningful benchmark" for the investments the plaintiff is challenging. *Id.* at 82a.

Respondents failed to demonstrate a meaningful benchmark. App., *infra*, 82a. They failed to allege that the S&P target date benchmark (which is a statistical composite rather than an investment vehicle) shared the Focus Funds' investment strategies and long-term objectives. *Id.* at 82a-83a. And similar failures doomed their allegations about three alternative target date fund suites. *Id.* at 75a-76a, 83a-84a.

The district court noted that the respondents' allegations shared the deficiencies of the allegations dismissed in *Meiners* v. *Wells Fargo & Co.*, 898 F.3d 820 (8th Cir. 2018). App., *infra*, 84a. Respondents also failed to rebut petitioners' argument, based on publicly available information about the Focus Funds, that the Focus Funds pursued a more conservative investment strategy and asset allocation than the alleged comparators. *Id.* at 85a.

4. A divided court of appeals reversed. App., *infra*, 1a-68a.

a. The majority focused on two of respondents' allegations, which it considered in combination. App., *infra*, 15a-16a, 25a-26a. In the majority's view, respondents' allegations that there had been significant changes or "turnover" in the Focus Funds' underlying investments before 2014, coupled with their allegations about the Focus Funds' later "underperformance," were together enough to raise an inference that Plan fiduciaries employed an imprudent process in retaining the Focus Funds. *Id.* at 15a (citation omitted).

The majority started by discussing in general terms how a plaintiff might plead a plausible claim based on investment performance. App., *infra*, 17a-18a. Interpreting Sixth Circuit precedent, the majority stated that plaintiffs need not allege a "meaningful benchmark" to state a claim for imprudence. *Id.* at 18a. "A meaningful benchmark may sometimes be one part of an imprudence pleading, but it is not required." *Ibid.*

Next, the majority ruled that respondents had pleaded a meaningful benchmark for the Focus Funds' performance: the S&P target date fund benchmark. App., *infra*, 19a. The majority recognized that petitioners' pleading lacked details about the S&P target date fund benchmark's "risk profile, bond-to-equity ratio, and investment strategy." *Id.* at 22a. "Nor [did] the complaint specifically articulate that the Focus Funds were designed to match the S&P target date fund benchmark in particular." *Ibid.* But in the majority's view, it sufficed to allege that the Focus Funds were "designed to meet industry-recognized benchmarks" and that "[t]he S&P target date fund benchmark is one such benchmark," *id.* at 23a (citations omitted)—that is, an "industry-recognized" benchmark. See Am. Compl. ¶¶ 67-68, 70. Having deemed the S&P target date fund benchmark a meaningful comparator, the majority did not address whether the three alternative target date funds suites supplied meaningful benchmarks. App., *infra*, 23a n.5.

b. Judge Murphy dissented. App., *infra*, 33a-68a. He would have affirmed dismissal of the imprudent-investment claim because the complaint alleges "nothing about the Focus Funds' risk profiles or their mix of equity and bond investments," let alone those of the comparators. *Id.* at 33a. The majority broke "new ground" in allowing this claim to proceed. *Id.* at 34a.

Judge Murphy's analysis began with ERISA's text and the common-law principles that this Court has used to illuminate the scope of ERISA's duties. App., *infra*, 39a-40a. Under the common law of trusts, there is no basis to infer that an investment is imprudent just because it earned lower returns than a different investment for a few years. *Id.* at 41a-47a. Securities with healthy returns year after year may fall within the "range of reasonable" options for a fiduciary to choose even if their returns are not as high a different investment's. *Id.* at 50a.

Here, the complaint pleaded no facts to suggest that the purported comparators are meaningful benchmarks for the Focus Funds. App., *infra*, 51a-52a. The amended complaint says nothing about the risk profiles or asset allocations of the Focus Funds or the comparators—let alone anything to refute the publicly available materials petitioners cited in their motion to dismiss, which indicate that the Focus Funds had a more conservative portfolio consisting of a much higher proportion of non-equity investments. *Id.* at 52a. And as for the S&P target date fund benchmark, the complaint offered "no details" about its makeup. *Ibid.*

Judge Murphy also recognized that the majority's approach "create[d] a circuit split." App., *infra*, 54a. The Seventh, Eighth, and Tenth Circuits have all embraced the meaningful-benchmark requirement when a complaint tries to infer imprudence from relative underperformance. *Ibid.* In addition, the majority's classification of the S&P target date fund benchmark as a meaningful benchmark conflicted with *Matousek* v. *MidAmerican Energy Co.*, 51 F.4th 274, 281-282 (8th Cir. 2022). App., *infra*, 56a.

5. Petitioners sought rehearing en banc, supported by a broad coalition of six amicus groups. The Sixth Circuit denied the petition for rehearing, with one judge recused. App., *infra*, 97a-98a. Judge Murphy would have granted rehearing for the reasons stated in his dissent. *Id.* at 98a.

REASONS FOR GRANTING THE PETITION

The decision below creates a circuit split on the requirements for pleading a plausible ERISA claim based on the relative underperformance of a plan investment. Three other circuits have held that such underperformance allegations require a sound basis for comparison or "meaningful benchmark." Yet the divided Sixth Circuit panel rejected that requirement. On top of that, it reimagined the meaningful-benchmark standard in a way that makes it meaningless for pleadings in future cases. That alternative holding itself conflicts with other circuit precedent. As Judge Murphy detailed, the majority's loose pleading standards improperly weaken the role of motions to dismiss in cases of this sort and depart from both this Court's precedent and the common law of trusts. The Court should grant review in this case to resolve this important question.

A. The decision below creates a conflict among the courts of appeals.

Contrary to the decision below, the Seventh, Eighth, and Tenth Circuits have all held that allegations of an investment's relative underperformance require a sound basis for comparison—a meaningful benchmark—to survive a motion to dismiss. Additional circuit court rulings have extended that principle to other ERISA contexts. The Sixth Circuit's contrary ruling opens a circuit split and makes that court an extreme outlier. And the majority's secondary holding on what suffices to plead a meaningful benchmark only compounds the problem because it too conflicts with other circuits' precedent and merely pays lip-service to the idea of a sound basis for comparison.

1. a. In *Meiners* v. *Wells Fargo & Co.*, 898 F.3d 820 (2018), the Eighth Circuit derived the meaningful-benchmark concept from a straightforward application of ordinary pleading standards to the context of ERISA fiduciary decisionmaking. To plausibly allege imprudent fiduciary decisionmaking under *Bell Atlantic Corp.* v. *Twombly*, 550 U.S. 544 (2007), and *Ashcroft* v. *Iqbal*, 556 U.S. 662 (2009), a complaint must do more than describe conduct that is consistent with imprudence; it must cross the line between possible liability and plausible liability. *Meiners*, 898 F.3d at 822. Simply alleging that an alternative investment performed better does not cross that line: "[t]he fact that one fund with a different investment strategy ultimately performed better does not establish anything

about whether the [plan investments] were an imprudent choice at the outset." *Id.* at 823 (footnote omitted). So, to plausibly plead that a prudent fiduciary "would have selected a different fund based on the cost or performance of the selected fund, a plaintiff must provide a sound basis for comparison—a meaningful benchmark." *Id.* at 822.

In *Meiners*, just as here, plaintiffs challenged a plan's target date funds by comparing their performance to an alternative suite of target date funds that had a lower allocation of bond-based investments than the plan's funds and performed better. 898 F.3d at 823 n.2. But unlike here, the appellate court affirmed dismissal of this challenge because of the complaint's "omission of any meaningful benchmark." *Id.* at 825.

Since *Meiners*, the Eighth Circuit has repeatedly enforced this meaningful-benchmark requirement in upholding dismissal of similarly deficient claims. First, in *Davis* v. *Washington University in St. Louis*, 960 F.3d 478, 484 (8th Cir. 2020), the court quoted *Meiners* and reaffirmed that "[f]or an investment-by-investment challenge," a complaint "must provide a sound basis for comparison—a meaningful benchmark." Comparing performance of investments with "different aims, different risks, and different potential rewards" is like "[c]omparing apples and oranges," and is "not a way to show that one is better or worse than the other." *Id.* at 485. The court again drove home the point in *Matousek* v. *MidAmerican Energy Co.*, 51 F.4th 274 (8th Cir. 2022). "The key to nudging an inference of imprudence from possible to plausible is providing 'a sound basis for comparison—a meaningful benchmark'—not just alleging that 'costs are too high, or returns are too low.'" *Id.* at 278 (quoting *Davis*, 960 F.3d at 484).

The Seventh Circuit took the same view in *Albert* v. *Oshkosh Corp.*, 47 F.4th 570 (2022). There, plaintiffs alleged that actively managed funds were a worse investment than passively managed alternatives because they charged higher fees that ate into investors' returns. See *id.* at 581. Actively managed funds, however, have the potential to earn higher returns overall depending on the fund manager's skill. The *Albert* plaintiffs failed to make "allegations providing a 'sound basis for comparison,'" and so the Seventh Circuit affirmed dismissal of their claim. *Id.* at 582 (quoting *Meiners*, 898 F.3d at 822).

The Tenth Circuit aligned itself with these circuits in *Matney* v. *Barrick Gold of North America*, 80 F.4th 1136 (2023). After reviewing the existing circuit precedent, the court "adopt[ed] the approach to an ERISA plaintiff's pleading burden articulated by the Eighth Circuit in *Meiners*," holding that "a plaintiff has the burden to allege a 'meaningful benchmark.'" *Id.* at 1148 (quoting *Meiners*, 898 F.3d at 822). As in earlier cases, the *Matney* plaintiffs challenged the fees charged by certain plan investments in comparison with alternatives that might have been chosen instead. *Id.* at 1149-1152. But the complaint contained "no information about the goals or strategies of the various [investments] so as to establish their comparability" and thus failed to "establish a meaningful comparison." *Id.* at 1153; see also *id.* at 1154.

In addition to applying the meaningful-benchmark requirement to allegations of imprudent investments, courts of appeals have widely applied the same logic to other accusations of imprudent fiduciary decisionmaking. Some plaintiffs, for example, have accused plans of incurring excessive fees for plan administrative or recordkeeping services, and compared the plan's alleged fees to fees supposedly paid by other plans as support. In affirming dismissal of such claims, several circuits have cited *Meiners* and its progeny to insist that comparator amounts for recordkeeping services be based on "a meaningful benchmark." *Singh* v. *Deloitte LLP*, 123 F.4th 88, 94-96 (2d Cir. 2024); see also *Matney*, 80 F.4th at 1157; *Matousek*, 51 F.4th at 279-280; *Barrett* v. *O'Reilly Auto., Inc.*, 112 F.4th 1135, 1138-1139 (8th Cir. 2024).

b. Despite this appellate consensus, the Sixth Circuit majority went seemingly out of its way to hold that "a meaningful benchmark is not required to plead a facially plausible claim of imprudence." App., *infra*, 19a. In so holding, the majority did not analyze the Seventh, Eighth, and Tenth Circuit decisions addressed above. Rather, it interpreted a pair of Sixth Circuit cases, *Smith* v. *CommonSpirit Health*, 37 F.4th 1160 (2022), and *Forman* v. *TriHealth, Inc.*, 40 F.4th 443 (2022), which had seemed to endorse the meaningful-benchmark requirement but which, according to the majority here, had not in fact done so. App., *infra*, 17a-18a. Henceforth, at least, Sixth Circuit law holds that "[a] meaningful benchmark may sometimes be one part of an imprudence pleading, but it is not required." *Id.* at 18a.

In dissent, Judge Murphy objected that this statement "create[s] a circuit split" insofar as it suggests that plaintiffs need not identify a meaningful benchmark when relying on an investment's relative underperformance. App., *infra*, 54a. He cited *Matousek*, *Matney*, and *Albert* to show that "other courts have adopted this 'meaningful benchmark' test." *Ibid.*

2. The majority then hedged its bets with an argument of its own creation, by alternatively holding that the complaint did plead a meaningful benchmark via the S&P target date fund benchmark, which allegedly outperformed the Focus Funds for three years (2011 to 2014). App., *infra*, 19a. But the complaint alleges no facts about the S&P target date fund benchmark that could satisfy the meaningful-benchmark pleading test applied in other circuits. Thus, the majority's secondary holding only sharpens the circuit conflict and confirms the need for this Court's review.

In other circuits, pleading a meaningful benchmark to compare investments' returns requires allegations that "the alternative investment options have similar investment strategies, similar investment objectives, or similar risk profiles to the plan's funds." *Matney*, 80 F.4th at 1148. A complaint fails to articulate a "sound basis for comparison" for the investments if there are "missing details" about "whether they hold similar securities, have similar investment strategies, and reflect a similar risk profile." *Matousek*, 51 F.4th at 281 (citation omitted). Indeed, in *Meiners*, the Eighth Circuit affirmed dismissal for reasons that equally compel dismissal here: the plaintiff compared the challenged target date funds to an alternative "with a different investment strategy," insofar as the target date funds selected by plan had a "higher allocation of bond[s]." 898 F.3d at 823 & n.2.

The dissent observed, and the majority seemed to concede, that the amended complaint "failed to allege" any information about the S&P target date fund benchmark's "risk profile, bond-to-equity ratio, and investment strategy." App., *infra*, 22a; *id.* at 33a-34a, 52a-55a (Murphy, J., dissenting). Nor does the complaint include any allegations about the Focus Funds' holdings or relative mixes of equities and bonds. *Id.* at 37a, 46a. But, Judge Murphy continued, petitioners had cited "information revealing that the Focus Funds had a much more conservative portfolio made up of more non-equities," which respondents did nothing to refute. *Id.* at 52a.[2] The comparison here, then, is fundamentally inapt in precisely the same way as the comparison the Eighth Circuit rejected in *Meiners*, 898 F.3d at 823 & n.2.

The majority claimed to draw support from an earlier Eighth Circuit case, *Braden* v. *Wal-Mart Stores, Inc.*, 588 F.3d 585 (2009). But the majority's reliance on *Braden* is misplaced. In *Braden*, "[t]he complaint state[d]" that the plan investments "underperformed the market indices they were designed to track." *Id.* at 596. In other words, as the Eighth Circuit recently clarified, *Braden* treated the plaintiffs' comparison as meaningful because "tracking the market index was the *stated investment goal* of the fund

[2] The Focus Funds "were designed shortly after the 2008 financial crisis with the goal to provide both growth and downside protection." *Cutrone* v. *Allstate Corp.*, No. 20-cv-6463, 2025 WL 306179, at *1 (N.D. Ill. Jan. 27, 2025). Compared to other target date funds, they "included lower allocations to equity overall," and even among equities "included relatively higher allocations to international equities." *Ibid.*

the plaintiffs challenged." *Matousek*, 51 F.4th at 281 (emphasis added).

Here, in contrast, the majority conceded in response to Judge Murphy that the complaint does not allege that "the Focus Funds were designed to match the S&P target date fund benchmark in particular." App., *infra*, 22a; see *id.* at 56a (Murphy, J., dissenting) ("Johnson's complaint * * * does not allege that the Focus Funds were designed to track the S&P target-date benchmark."). Rather, the complaint alleges that "the Focus Funds were 'index funds designed to meet [unidentified] industry-recognized benchmarks.'" *Id.* at 55a (Murphy, J., dissenting) (brackets in original) (quoting Am. Compl. ¶ 70). And it alleges that the S&P target date fund benchmark is an "industry-accepted target date benchmark[]." Am. Compl. ¶¶ 67-68. Respondent's complaint thus fails the Eighth Circuit's meaningful-benchmark test because, unlike the complaint in *Braden*, it never alleges that tracking the comparator was the challenged funds' "stated investment goal." *Matousek*, 51 F.4th at 281. So the majority adopted a different, much less demanding test.

The majority also diverged from other circuits in allowing an industrywide average to serve as a meaningful benchmark. No one can invest in the S&P target date fund benchmark. App., *infra*, 53a (Murphy, J., dissenting). It merely reflects a composite or average of performance across a wide universe of target date funds. See *ibid.* In *Matousek*, the Eighth Circuit rejected a purported meaningful benchmark premised on averages within the challenged investment's peer group. 51 F.4th at 281-282. Thus, the majority's reliance on the average performance represented by the

S&P target date fund benchmark "conflicts with *Matousek*." App., *infra*, 56a (Murphy, J., dissenting). It is also at odds with the Tenth Circuit's decision in *Matney*, which followed *Matousek* in rejecting a "401k Averages Book" as a meaningful comparator for a particular 401(k) plan. *Matney*, 80 F.4th at 1158; see also *Barrett*, 112 F.4th at 1140 (adhering to *Matousek* and *Matney*). Under Eighth and Tenth Circuit standards, the S&P target date fund benchmark is not a meaningful benchmark for respondents' claims. See, *e.g.*, *Fitzpatrick* v. *Neb. Methodist Health Sys., Inc.*, No. 23-cv-27, 2023 WL 5105362, at *7 (D. Neb. Aug. 9, 2023) (relying on *Matousek* to hold that "the S&P Target Date Index" was not a meaningful benchmark despite allegations that it was a "prominent and widely-accepted target date bench mark" and "the primary benchmark throughout the industry"), amended on reconsideration on other grounds, 2024 WL 361195 (D. Neb. Jan. 31, 2024).[3]

3. In sum, the Sixth Circuit majority's wholesale repudiation of the meaningful-benchmark requirement and reimagination of that requirement depart

[3] Even beyond the Eighth and Tenth Circuits, many courts have concluded that the S&P target date fund benchmark is not a meaningful benchmark for imprudent-investment claims. See, *e.g.*, *Luckett* v. *Wintrust Fin. Corp.*, No. 22-cv-3968, 2024 WL 3823175, at *4 (N.D. Ill. Aug. 14, 2024); *Bracalente* v. *Cisco Sys., Inc.*, No. 22-cv-4417, 2024 WL 2274523, at *6 (N.D. Cal. May 20, 2024); *Beldock* v. *Microsoft Corp.*, No. 22-cv-1082, 2023 WL 3058016, at *3 (W.D. Wash. Apr. 24, 2023); *Hall* v. *Cap. One Fin. Corp.*, No. 22-cv-857, 2023 WL 2333304, at *7 (E.D. Va. Mar. 1, 2023); *Tullgren* v. *Hamilton*, No. 22-cv-856, 2023 WL 2307615, at *7 (E.D. Va. Mar. 1, 2023); *Wehner* v. *Genentech, Inc.*, No. 20-cv-6894, 2021 WL 2417098, at *8 (N.D. Cal. June 14, 2021).

from other circuits' precedent several times over. Certiorari is needed to restore uniformity to the law.

B. The decision below is incorrect.

1. The Sixth Circuit was wrong to nullify the meaningful-benchmark requirement, which follows naturally from this Court's precedent. The plausibility standard "asks for more than a sheer possibility that a defendant has acted unlawfully." *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 556). And "[w]here a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of 'entitlement to relief.'" *Ibid.* (quoting *Twombly*, 550 U.S. at 557). Maintaining the line between possibility and plausibility is especially important when drawing inferences about fiduciary decisionmaking. "At times, the circumstances facing an ERISA fiduciary will implicate difficult tradeoffs." *Hughes* v. *Nw. Univ.*, 595 U.S. 170, 177 (2022). So "courts must give due regard to the range of reasonable judgments a fiduciary may make based on her experience and expertise." *Ibid.*

The only way to heed this instruction when evaluating the performance of a fiduciary's chosen investments is to measure that performance by an apt standard. Retirement plans may, and often must, offer a menu of investment options with "different aims, different risks, and different potential rewards that cater to different investors." *Davis*, 960 F.3d at 485. As just one example, those close to retirement are less tolerant of investment risk than those just entering the workforce. Accordingly, offering lower-risk bonds in addition to higher-risk equities is not imprudent, even if the latter perform better during a bull market.

"Comparing apples and oranges is not a way to show that one is better or worse than the other." *Ibid.*

Yet here, the majority effectively allowed respondents to do that. Respondents got the green light without any allegations about the Focus Funds' or S&P target date fund benchmark's "risk profile, bond-to-equity ratio, and investment strategy," App., *infra*, 22a, or any other allegations showing that respondents' performance comparisons were truly apples-to-apples. Without such allegations, respondents' "claim is analogous to suggesting that an administrator acted imprudently by including (safe) government bonds in a balanced portfolio because the bonds performed worse than (risky) stocks during a bull market." *Id.* at 33a-34a (Murphy, J., dissenting).

2. Further support for the meaningful-benchmark requirement comes from the common law of trusts. This Court has often directed lower courts to "look to the law of trusts" when "determining the contours of an ERISA fiduciary's duty." *Tibble* v. *Edison Int'l*, 575 U.S. 523, 528-529 (2015). Judge Murphy (unlike the majority) did that here and found no "authorities suggesting that an investment might be 'imprudent' simply because it has a lower rate of return than some other option." App., *infra*, 41a.

As Judge Murphy detailed, trust law generally holds trustees to standards of conduct rather than standard of performance. App., *infra*, 41a-43a. And those standards do not require trustees to prioritize maximization of returns above all else. Rather, trustees have competing duties, which they must balance, both to make trust property productive (seek returns) and to preserve the trust property (avoid losses). *Id.*

at 43a-44a. Finally, trust law requires trustees to consider investments in relation to the trust's broader portfolio, not just in isolation. *Id.* at 47a-48a. So, here, the "Focus Funds' relative underperformance—without more—would not help" respondents establish a breach of fiduciary duty under traditional common-law standards. *Id.* at 48a.

3. For similar reasons, the Sixth Circuit's novel test for meaningful benchmarks is also wrong. As discussed above, respondents here did not try to establish a meaningful benchmark in the way that plaintiffs in other circuits must do—through allegations about the comparator's risk profile, asset allocation (bonds versus equities), or investment strategy. App., *infra*, 22a. Yet target date funds can vary significantly along each of these dimensions.

As the Eleventh Circuit recently observed, "[t]arget date funds are not all created equal." *Pizarro* v. *Home Depot, Inc.*, 111 F.4th 1165, 1180 (2024), petition for cert. pending, No. 24-620 (filed Dec. 3, 2024). For instance, "[i]n years when the equity market is hot, a more aggressive target date fund that retains equities longer will appear to outperform a fund that shifts toward more conservative assets like bonds sooner." *Ibid.* But such a "snapshot" of performance "does not mean it is objectively imprudent to adopt a more conservative strategy—the tables turn when the market is down." *Ibid.*[4]

[4] The Department of Labor has similarly explained that even target date funds "may have very different investment strategies and risk" profiles. U.S. Dep't of Lab., Emp. Benefits Sec. Admin., *Investor Bulletin: Target Date Retirement Funds* 2-3 (May 6, 2010), https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-

Rather than require the allegations necessary in other circuits, the majority read the complaint to plead that the Focus Funds were implicitly designed to perform in line with the S&P target date benchmark. App., *infra*, 22a-23a. But since respondents never alleged that the Focus Funds identified the S&P target date fund benchmark as their benchmark, the majority's reasoning only makes matters worse. It provides a clear blueprint for future plaintiffs to survive any motion to dismiss.

All it takes is an (easy-to-make) allegation that the challenged investment was designed to meet industry-recognized benchmarks combined with an (easy-to-make) allegation that plaintiffs' preferred benchmark is "industry-recognized." A plaintiff could thus (1) take any plan investment that, in hindsight, earned lower returns than some fund or average over a brief period; (2) allege that the investment was designed to perform in line with "industry-recognized" comparators; (3) allege that the preferred comparator was "industry-recognized"; and (4) automatically have a "meaningful" comparison. This step-by-step guide

activities/resource-center/fact-sheets/investor-bulletin-target-date-retirement-funds.pdf. Target date funds that "keep a sizable investment in more volatile assets, like stocks," carry more "investment risk" but also offer more potential reward in comparison to target date funds that are "concentrated in more conservative and less volatile investments," like "bonds and cash instruments." U.S. Dep't of Lab., Emp. Benefits Sec. Admin., *Target Date Retirement Funds—Tips for ERISA Plan Fiduciaries* 1-2 (Feb. 2013), https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/fact-sheets/target-date-retirement-funds-erisa-plan-fiduciaries-tips.pdf.

for pleading around the meaningful-benchmark hurdle shows how, in the Sixth Circuit, it is no longer a hurdle at all.

C. The question presented is important and warrants review in this case.

This circuit conflict over pleading requirements deserves the Court's immediate attention. The motion to dismiss is an "important mechanism for weeding out meritless claims" in ERISA class actions. *Fifth Third Bancorp* v. *Dudenhoeffer*, 573 U.S. 409, 425 (2014). But for the reasons just discussed, the Sixth Circuit's feeble substitute for other circuits' meaningful-benchmark requirement will do nothing to weed out meritless claims because it can be pleaded around with ease. When Congress enacted ERISA, it understood that subjecting plans to unwarranted "litigation expenses" will in the long run deter them from investing in employee benefits. *Conkright* v. *Frommert*, 559 U.S. 506, 516 (2010) (citation omitted). That is exactly what will happen if the Sixth Circuit's enfeebled pleading standards are allowed to stand.

Those standards are especially problematic because, as the six amici explained in supporting the petition for en banc rehearing below, the burdens of discovery in this type of ERISA class action are largely one-sided. See C.A. Amici Br. 11-12. For defendants, but not plaintiffs, "the prospect of discovery * * * is ominous." *Pension Benefit Guar. Corp. ex rel. St. Vincent Cath. Med. Ctrs. Ret. Plan* v. *Morgan Stanley Inv. Mgmt. Inc.*, 712 F.3d 705, 719 (2d Cir. 2013). Much as with securities class actions, these asymmetrical litigation costs—not to mention the potential for multimillion-dollar judgments against the individuals who serve on fiduciary committees—create immense pressure to settle after the denial of a motion to dismiss. See *ibid.* (citing *Dura Pharms., Inc.* v. *Broudo*, 544 U.S. 336, 347 (2005)). Meaningful pleading standards are critical so "the threat of discovery expense" does not "push cost-conscious defendants to settle even anemic cases." *Twombly*, 550 U.S. at 559.

ERISA, moreover, was enacted to ensure that plans are subject to "uniform" standards." *Rutledge* v. *Pharm. Care Mgmt. Ass'n*, 592 U.S. 80, 86 (2020) (citation omitted). That goal is thwarted by a circuit split on what it takes to plead a claim. So, not surprisingly, this Court regularly grants certiorari to resolve circuit splits over ERISA pleading requirements. See, *e.g.*, *Cunningham* v. *Cornell Univ.*, 145 S. Ct. 118 (2024); *Hughes* v. *Nw. Univ.*, 141 S. Ct. 2882 (2021); *Ret. Plans Comm. of IBM* v. *Jander*, 139 S. Ct. 2667 (2019). It should do likewise here to resolve the circuit split over the meaningful-benchmark requirement.

This is an excellent vehicle to do so. The decision below not only undermines the meaningful-benchmark requirement in general terms but also sows confusion over the sorts of allegations that satisfy it. And the circuit splits on these questions were material to the majority's judgment. To be sure, the majority also considered respondents' allegation that the Focus Funds had abnormally high "turnover" in 2013, before the Focus Funds were even added to the Plan. App., *infra*, 15a; *id.* at 58a (Murphy, J., dissenting). But as Judge Murphy noted, the majority never "suggest[ed] that high turnover in 2013 would *alone* suffice to plausibly plead an imprudence claim." *Id.* at 59a. The majority instead read that allegation "together" with the underperformance allegations. *Id.* at 17a, 26a; see also *id.* at 16a. Thus, if the underperformance allegations did not pass muster because of a lack of a meaningful benchmark, the judgment below would not survive and at a minimum would need to be reevaluated.

Finally, there is a significant danger that the circuit conflict will evade this Court's review if the Court does not grant review in this case. The law firms that specialize in ERISA class-action litigation have little reason to invest in filing future cases in the circuits that require a meaningful benchmark and give that requirement teeth. They will focus on the Sixth Circuit or circuits that have no appellate precedent on point. ERISA's venue provision gives plaintiffs multiple options, 29 U.S.C. 1132(e)(2), and rational class counsel expend effort on cases in favorable forums. They will know that if their case survives the motion to dismiss, defendants have no realistic chance to appeal that interlocutory ruling. Then, either the defendants will give into the pressure to settle or the adequate-pleading questions will become moot as the case progresses through later stages of litigation. Either way, there will be no court of appeals ruling for this Court to review.

The Court should therefore take this opportunity to decide the question presented. The Sixth Circuit's new legal framework demolishes a pleading requirement that three other circuits have embraced. And in doing so it "weakens an 'important mechanism' to stop costly litigation over 'meritless claims.'" App., *infra*, 33a (Murphy, J., dissenting) (quoting *Dudenhoeffer*, 573 U.S. at 425). This Court should grant review and reverse.

CONCLUSION

The petition for a writ of certiorari should be granted.

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