No. 24-1030

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

REPLY BRIEF FOR THE PETITIONERS

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CORPORATE DISCLOSURE STATEMENT

The corporate disclosure statement in the petition for a writ of certiorari remains accurate.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

TABLE OF AUTHORITIES—continued

Page(s)

REPLY BRIEF FOR THE PETITIONERS

Respondents have no answer to Judge Murphy's observation that "other courts would have dismissed [their] claim for failing to show that the alternative options were 'meaningful' comparators." Pet. App. 34a (dissenting opinion). Even respondents concede that the Eighth Circuit, for example, "has required a meaningful benchmark for a claim alleging that a prudent fiduciary 'would have selected a different fund based on the cost or performance of the selected fund.'" Br. in Opp. 12-13 (quoting *Meiners* v. *Wells Fargo & Co.*, 898 F.3d 820, 822 (2018)). As the Sixth Circuit recognized, respondents' claim is based on the Focus Funds' performance. Yet it refused to require the meaningful-benchmark allegations that the Eighth Circuit and others require for such a claim—namely, allegations about the comparator's risk profiles, asset allocations, and investment strategies. See *Meiners*, 898 F.3d at 823 & n.2; *Matousek* v. *MidAmerican Energy Co.*, 51 F.4th 274, 281 (8th Cir. 2022); *Matney* v. *Barrick Gold of N. Am.*, 80 F.4th 1136, 1153 (10th Cir. 2023); cf. Pet. App. 22a. The circuit split is real.

And since the petition's filing, the split has deepened. The Ninth Circuit unanimously affirmed the dismissal of a very similar challenge to a suite of target date funds. *Anderson* v. *Intel Corp. Inv. Pol'y Comm.*, — F.4th —, 2025 WL 1463295 (2025). Those plaintiffs too tried to infer imprudence from performance comparisons. But the Ninth Circuit had no difficulty requiring a meaningful benchmark for such allegations: "to the extent a plaintiff asks a court to infer that a fiduciary used improper methods based on the performance of the investments, as Anderson does in part here, he must compare that performance to funds or investments that are meaningfully similar." *Id.* at *5 (citing *Meiners*, 898 F.3d at 822). "[S]imply labeling funds as 'comparable' or 'a peer' is insufficient to establish that those funds are meaningful benchmarks." *Ibid.* The Ninth Circuit, then, is yet another court that would have dismissed respondents' claim for lack of a meaningful benchmark. But the Sixth Circuit applied a lower pleading standard and treated respondents' label, "industry-recognized," as sufficient.

Respondents do not deny that plaintiffs can *always* make the "industry-recognized" allegations that sufficed for the majority below. See Pet. 23. Their counsel are highly experienced ERISA litigators and must know this point is true. The Sixth Circuit's standard cannot rule out any performance comparison that a plaintiff wishes to make. Plaintiffs can always plead that the investment they challenge aimed to meet industry-recognized benchmarks and can always plead that the benchmark they favor is "recognized" by the industry. Indeed, the *Anderson* plaintiffs made such allegations—even relying on the same S&P target date fund benchmark that respondents rely on here—but the Ninth Circuit saw right through them.

Respondents' main objection to certiorari thus falls apart upon inspection. And their secondary objections fare no better. The Sixth Circuit's approach is an extreme outlier because it is profoundly wrong. The meaningful-benchmark requirement flows from ERISA's text, this Court's precedent, and common sense—as numerous judges in many circuits have explained. This case is an excellent vehicle to address this question. The Court should grant certiorari, reverse the Sixth Circuit, and restore uniformity to this area of federal law.

A. The courts of appeals are divided over the question presented.

1. In arguing that no circuit split exists, respondents disregard the question presented: whether performance comparisons need a sound basis when the plaintiff uses them to plead an imprudent-investment claim. Rather than answer that question, respondents pretend that the dispute is whether meaningful comparisons are required for *every* imprudence claim. Br. in Opp. 12-14.

But everyone agrees that ERISA plaintiffs can plead imprudence without performance comparisons. The straightforward way to plead this claim is to "make direct allegations" about the imprudence of the fiduciary's decisionmaking methods. *Anderson*, 2025 WL 1463295, at *5; see also *id.* at *10 (Berzon, J., concurring); Pet. App. 54a (Murphy, J., dissenting). Respondents, however, did not make direct allegations. They opted for the more common inferential approach, relying on allegations that in their view supported an inference that the methods used to select and monitor those funds were imprudent. Pet. App. 23a-24a. The dispute here is whether a plaintiff who relies on performance comparisons as circumstantial evidence of imprudence must allege facts showing that those comparisons are meaningful ones. *Id.* at 49a-50a, 54a (Murphy, J., dissenting). It is on *that* question where the circuits disagree.

Indeed, even respondents concede that in the Eighth Circuit, a meaningful benchmark is required "for a claim alleging that a prudent fiduciary 'would have selected a different fund based on the * * * performance of the selected fund.'" Br. in Opp. 12 (quoting *Meiners*, 898 F.3d at 822). Their claim here is just such a claim. Per the majority below, respondents "argue[] that a prudent fiduciary would have removed the Focus Funds based on its underperformance compared to the S&P target date fund benchmark and alternative target date funds." Pet. App. 12a; see also Br. in Opp. 7. In the Eighth Circuit, as respondents concede, this type of allegation requires a meaningful benchmark, but here the Sixth Circuit said a meaningful benchmark was "not required." Pet. App. 18a-19a. Respondents never explain how that statement is consistent with what even respondents recognize as the Eighth Circuit's rule—because it is not.

Nor is the Eighth Circuit alone in requiring a meaningful benchmark for this type of underperformance allegation. In *Anderson*, the Ninth Circuit expressly sided with the Eighth Circuit's view that the "key" to plausibly pleading respondents' type of performance-based claim is a "sound basis for comparison" or "meaningful benchmark." 2025 WL 1463295, at *4 (quoting *Matousek*, 51 F.4th at 278). And respondents do not dispute that still other circuits require meaningful comparisons for other types of ERISA allegations. See Br. in Opp. 13-14.[1]

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[1] After the filing of the petition, the Sixth Circuit itself embraced a meaningful-benchmark standard for a different type of comparison—namely a comparison of the fees paid by different plans for recordkeeping services. *England* v. *DENSO Int'l Am.*

2. Other circuits also reject the Sixth Circuit's acceptance of comparisons to a broad-based index. *Anderson* illustrates this point of conflict, too. Much like respondents, the *Anderson* plaintiffs compared their target date funds to "published indices like the S&P 500 and Morningstar categories of peer-group funds," but the Ninth Circuit ruled that these comparisons flunked the meaningful-benchmark test. 2025 WL 1463295, at *3.

The Morningstar peer group that the *Anderson* plaintiffs proposed as a benchmark was "an average of a large group of [target date funds]." *Anderson* v. *Intel Corp. Inv. Pol'y Comm.*, 579 F. Supp. 3d 1133, 1150 (N.D. Cal. 2022), aff'd, — F.4th —, 2025 WL 1463295 (9th Cir. 2025). This broad-ranging average was not a meaningful benchmark because the plaintiffs did not allege that all the funds within the peer group categories had "similar aims, risks, and rewards" as their plan's funds. *Id.* at 1151. The Ninth Circuit agreed: "simply labeling funds as 'comparable' or 'a peer' is insufficient to establish that those funds are meaningful benchmarks * * * because they had 'different aims, different risks, and different potential rewards.'" 2025 WL 1463295, at *5 (quoting *Davis* v. *Wash. Univ. in St. Louis*, 960 F.3d 478, 485 (8th Cir. 2020)). That conclusion comports with the Eighth and Tenth Circuits' view that broad-based averages or indices are not meaningful benchmarks just because a

Inc., 136 F.4th 632, 636-637 (2025). That decision nonetheless acknowledged the decision below, *id.* at 636, which the Sixth Circuit declined to rehear en banc, Pet. App. 98a. Thus, unless this Court grants review, the decision below will continue to set Sixth Circuit law for performance-based ERISA claims.

complaint puts conclusory labels on them. See *Matney*, 80 F.4th at 1157-1158; *Matousek*, 51 F.4th at 280-281; *Davis*, 960 F.3d at 485 n.4.

The meaningful-benchmark test of these circuits would clearly sink respondents' claim. As the majority admitted, Pet. App. 22a, respondents alleged nothing to suggest that the risk profile, bond-to-equity ratio, and investment strategy captured by the S&P target date fund benchmark are comparable to those of the Focus Funds. Nor could they. The S&P benchmark is an average of a diverse group of different target date funds, including both active and passive strategies. See Pet. App. 53a (Murphy, J., dissenting). Yet the majority treated the S&P benchmark as a valid comparator because respondents labeled it as "industry-recognized" or "industry-accepted." Pet. App. 5a 23a. These general and conclusory labels are functionally identical to the labels that *Anderson* and other circuits dismiss as insufficient. Contrary to respondents' claim (at 14-15), this difference is not a fact-bound application of a uniform standard. Rather, the circuits disagree over the standard that makes a benchmark meaningful. In the Eighth, Ninth, and Tenth Circuits, the allegations must show that the benchmark reflects the aims, risks, and potential rewards of the purportedly imprudent investment. In the Sixth Circuit alone, a formulaic label is enough.

The underlying pleading in *Anderson* puts the conflict into sharp relief. The *Anderson* plaintiffs, like respondents here, compared their plan's target date funds to the S&P target date fund benchmark (also called the "S&P Target Date Index Series"), which they described as a "widely-used benchmark" from a "recognized" source. Amended Consolidated Complaint ¶¶ 141, 164, 170, *Anderson* v. *Intel Corp. Inv. Pol'y Comm.*, 579 F. Supp. 3d 1133 (N.D. Cal. 2022) (No. 19-cv-4618), ECF No. 113. Under the Sixth Circuit's holding below, those allegations suffice. But in *Anderson*, they failed. If this case had arisen in the Ninth Circuit, respondents' imprudent-investment claim likewise would not have survived.

Respondents cannot reconcile the decision below with the decisions of other circuits. The circuits answer the question presented in opposite ways, yielding opposite results. This Court's intervention is needed to resolve this conflict and confusion.[2]

B. The decision below is incorrect.

1. Respondents' defense of the Sixth Circuit's decision exhibits the same flaw as their arguments against the circuit split. They again set up a strawman (at 18-20)—as though petitioners were claiming that meaningful comparisons are required for every imprudent-investment claim. But petitioners' claim, instead, is simply that *if* plaintiffs try to plead imprudence by comparing investment performance to some

[2] Respondents try (at 18) to explain the outcome here by claiming that the Focus Funds were "designed to meet" the S&P target date fund benchmark. That is untrue. Just like the target date funds in *Anderson*, 2025 WL 1463295, at *5, the Focus Funds were designed to meet a custom benchmark reflecting their conservative investment strategy, not the S&P benchmark. See Pet. C.A. Br. 12, 35-36. And, as the petition explained (at 18), the majority below conceded that the complaint did not "articulate that the Focus Funds were designed to match the S&P target date fund benchmark in particular." Pet. App. 22a, 55a. Respondents simply ignore this concession.

benchmark, the comparison must be a meaningful one.

Respondents do nothing to discredit that claim. As Judge Miller recently observed for the Ninth Circuit in *Anderson*, when a plaintiff relies on performance comparisons, "[t]he need for a relevant comparator with similar objectives—not just a better-performing * * * investment—is implicit in ERISA's text." 2025 WL 1463295, at *5. The statutory standard of care is based on "a hypothetical prudent person 'acting *in a like capacity* * * * in the conduct of an enterprise *of a like character* and *with like aims*.'" *Ibid.* (quoting 29 U.S.C. 1104(a)(1)(B)). The statute thus "makes clear that the goals of the plan matter." *Ibid.* Regulations of the Department of Labor support the same conclusion. *Ibid.* (citing 29 C.F.R. 2550.404a-1(b)(2)(i)). So does common sense, as Judge Stras has explained: "Comparing apples and oranges is not a way to show that one is better or worse than the other." *Davis*, 960 F.3d at 485.

2. Respondents do not contest petitioners' argument that the Sixth Circuit's decision charts a path to plead around the meaningful-benchmark requirement for virtually any imprudent-investment claim. Pet. 23. They suggest (at 21) that what will qualify as a meaningful benchmark will depend on the particulars of the case. Not under the Sixth Circuit's test. The S&P benchmark (or whatever benchmark the plaintiff prefers) can always be characterized as an "industry-recognized" measure of performance.

Respondents thus get things backwards when they accuse petitioners (at 21) of espousing "a onesize-fits-all approach." That label more aptly describes respondents' view and the Sixth Circuit's, which enable a cherry-picked benchmark to serve as a meaningful comparator for any plan investment through labels and artful pleading, even when the fiduciary made a "reasonable judgment[]" to pursue a different investment objective. *Hughes* v. *Nw. Univ.*, 595 U.S. 170, 177 (2022).

Respondents argue (at 20, 24-25) that liberal pleading standards are better as a policy matter because ERISA plaintiffs lack sufficient information to plead imprudence claims. But as the Ninth Circuit explained, this concern is overblown: ERISA arms prospective plaintiffs with extensive information about their plans and investments, and in appropriate cases, plaintiffs can use these disclosures to raise a plausible inference of imprudence. *Anderson*, 2025 WL 1463295, at *7. Ordinary pleading requirements play a vital role helping courts "divide the plausible sheep from the meritless goats." *Fifth Third Bancorp* v. *Dudenhoeffer*, 573 U.S. 409, 425 (2014). The Sixth Circuit's rule, in contrast, cannot play that role; it allows the goats to sneak through in sheep's clothing.

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

1. The standard for pleading an imprudent-investment claim under ERISA is a recurring and undeniably consequential issue. As this Court has said, the motion to dismiss is an "important mechanism for weeding out meritless claims" in ERISA class action litigation. *Dudenhoeffer*, 573 U.S. at 425.

And just a few weeks ago, the Court unanimously acknowledged "serious concerns" that some ERISA claims may "too easily get past the motion-to-dismiss stage" and impose unwarranted costs on plan sponsors and fiduciaries. *Cunningham* v. *Cornell Univ.*, 145 S. Ct. 1020, 1031 (2025). Three Justices also wrote separately to highlight how in ERISA cases, "getting by a motion to dismiss is often the whole ball game because of the cost of discovery." *Id.* at 1033 (Alito, J., concurring). Given the asymmetry of those discovery costs, defendants often face pressure to settle ERISA claims that survive dismissal. *Ibid.* Such dynamics are great for the class action attorneys who "get a windfall." *Ibid.* But they are bad for ERISA plans and for those who sponsor and administer them, see *ibid.*, as the amicus here elaborates in detail. Encore Br. 5-7, 22-24.

Respondents take a different view (at 24-26) of the recent wave of ERISA class actions and insist that attorney-driven private litigation helps the Department of Labor's enforcement efforts.[3] But this theory assumes that the private litigation targets actual violations of the statute. Respondents ignore that nearly all these private cases are settling without a decision on the merits and that defendants tend to win the rare cases that go to trial. Encore Br. 12; Chubb, *A Surprise Twist in ERISA Class Action Trends in 2024* (May 2025), https://www.chubb.com/content/dam/chubb-sites/chubb-com/us-en/business-insurance/fiduciary-liability/pdfs/2024-fiduciary-infographic-final.pdf. And when plans are forced to pay escalating amounts

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[3] Given the Department of Labor's interest in ERISA's enforcement, the Court may wish to call here for the views of the Solicitor General, as the Court often does in ERISA cases.

through surging defense costs, settlements, and fiduciary insurance premiums, such expenses may ultimately be borne by plan participants. See *Cunningham*, 145 S. Ct. at 1033 (Alito, J., concurring).

2. Respondents do not dispute petitioners' reasons (at 25-26) why this case is an excellent vehicle to address the question presented. Nor do they contest petitioners' concern (at 26) that ERISA's broad venue provision will enable future plaintiffs to funnel these claims toward friendlier circuits and limit future opportunities for the Court to address the question.

Instead, respondents argue (at 23-24) that this case would be a poor vehicle because of its interlocutory posture. This argument is meritless. When a district court grants dismissal and the court of appeals reverses, the case will always come to this court in an interlocutory posture. Yet the Court routinely grants certiorari in such cases, including ERISA cases. See, *e.g.*, *Smith & Wesson Brands, Inc.* v. *Estados Unidos Mexicanos*, 145 S. Ct. 116 (2024); *Macquarie Infrastructure Corp.* v. *Moab Partners, L.P.*, 601 U.S. 257, 261-262 (2024); *Health & Hosp. Corp.* v. *Talevski*, 599 U.S. 166, 174 (2023); *Ret. Plans Comm. of IBM* v. *Jander*, 589 U.S. 49 (2020) (per curiam); *Dudenhoeffer*, 573 U.S. at 414; cf. Stephen M. Shapiro et al., *Supreme Court Practice* 4-57 (11th ed. 2019) (identifying cases reviewing denials of motions to dismiss as examples where an interlocutory posture is "no impediment to certiorari"). Here, moreover, the Sixth Circuit granted petitioners' motion to stay the issuance of its mandate. So, unlike many interlocutory cases, there is no risk of further lower court rulings that could complicate the Court's review.

Respondents suggest (at 24) that the survival of their share-class claim makes this case a poor vehicle to address their underperformance allegations. Not so. The opinions below reflect that these are separate claims that stand or fall independently. See Pet. App. 12a, 26a; Br. in Opp. 5-8. The fact that only the underperformance allegations are before this Court makes this case a better vehicle, not a worse one. It ensures the Court can cleanly resolve the question that divides the lower courts without needing to address collateral issues. The Court should do so. The case has no vehicle problems, and the question needs the Court's attention.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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