No. 24-1030

IN THE
Supreme Court of the United States

PARKER-HANNIFIN CORPORATION, ET AL.,
Petitioners,

v.

MICHAEL D. JOHNSON, ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

SUPPLEMENTAL BRIEF FOR RESPONDENTS

DAVID C. FREDERICK
ALEX P. TREIGER
KELLOGG, HANSEN, TODD, FIGEL & FREDERICK, P.L.L.C.
1615 M Street, N.W.
Suite 400
Washington, D.C. 20036
(202) 326-7900

SEAN E. SOYARS
Counsel of Record
JEROME J. SCHLICHTER
SCHLICHTER BOGARD LLC
100 South Fourth Street
Suite 1200
St. Louis, Missouri 63102
(314) 621-6115
(ssoyars@uselaws.com)

Counsel for Respondents

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

STATUTES

OTHER MATERIALS

In keeping with ERISA's remedial purpose, the government historically has opposed categorical pleading rules to state a claim for breaching ERISA's duty of prudence. *See*, *e.g.*, Br. for the United States as Amicus Curiae Supporting Petitioners, *Hughes v. Northwestern Univ.*, 595 U.S. 170 (2022) (No. 19-1401 (U.S. Sept. 10, 2021)), 2021 WL 4197214; Br. for the United States as Amicus Curiae Supporting Petitioners, *Tibble v. Edison Int'l*, 575 U.S. 523 (2015) (No. 13-550 (U.S. Dec. 9, 2014)), 2014 WL 6984131. Changing tack, the government now maintains that an imprudence claim based in part on performance comparisons requires detailed allegations demonstrating the subject fund and the comparator share the same strategies, risks, and objectives. According to the government, the Sixth Circuit erred because it disclaimed the need for a comparator to plead underperformance and because the Amended Complaint fails to establish the S&P target date fund benchmark ("S&P benchmark") is sufficiently similar to the Focus Funds to serve as a proper benchmark.

The government's highly fact-bound arguments are misplaced. The government isolates the underperformance allegations, ignoring allegations of the Focus Funds' high turnover that reinforce the plausibility of the Focus Funds' underperformance and petitioners' imprudence. Nor did the Sixth Circuit disclaim the need to plead a meaningful benchmark to infer imprudence from performance comparisons. The court instead held that, although a comparator is not needed in every case, respondents pleaded one here. That conclusion was correct. Respondents alleged the Focus Funds were designed to meet industry-recognized indices and the S&P benchmark is the relevant market index. Those averments give rise to the reasonable

inferences that they share the same goals, objectives, and risks. The government reaches the opposite conclusion by demanding allegations no circuit requires and drawing inferences against respondents.

The government fares no better in trying to show the other certiorari criteria are met. The government says the circuits are split, but the courts of appeals agree that prudence is a context-specific inquiry and that a plaintiff must plead a meaningful benchmark to state an imprudence claim based on performance comparisons. The government also glosses over the case's interlocutory posture, which makes it a poor vehicle to review the question presented because the case (and discovery) will proceed on other claims petitioners do not challenge.

ARGUMENT

I. THE DECISION BELOW WAS CORRECT

1. The Sixth Circuit correctly applied settled legal principles in holding the Amended Complaint states a plausible claim for breach of ERISA's duty of prudence. Respondents "plead[ed] underperformance compared to the S&P target date fund benchmark." App. 23a. That was a "meaningful comparison," *id.*, because the Focus Funds were "passive" funds "'designed to meet industry-recognized benchmarks,'" and the S&P benchmark was "the relevant 'industry-accepted target date benchmark[] for "Through" target date funds.'" App. 19a (quoting Am. Compl. ¶¶ 67-68, 70, ECF No. 20) (brackets in opinion). Petitioners also "retained the Focus Funds despite 'persistent' 'upheaval' of the Funds' assets and turnover rates many times higher than what is considered 'significant' and 'warrant[ing] close analysis.'" App. 25a (quoting Am. Compl. ¶¶ 59, 95) (brackets in opinion). These "allegations together" are "sufficient to state a claim

for imprudent process" because a "jury could plausibly find that a prudent decision-making process would have considered the Funds' turnover and underperformance and would have arrived at the conclusion that retaining the funds would not be in the Plan's best interests." App. 25a-26a.

In recommending review, the government atomizes the Amended Complaint, fixating only on the Focus Funds' underperformance compared to the S&P benchmark. *See* U.S. Br. 11-17. But the Amended Complaint must be assessed "as a whole," *Hughes v. Northwestern Univ.*, 595 U.S. 170, 177 (2022), "not parsed piece by piece to determine whether each allegation, in isolation, is plausible," *Braden v. Wal-Mart Stores, Inc.*, 588 F.3d 585, 594 (8th Cir. 2009); *cf. Tellabs, Inc. v. Makor Issues & Rts., Ltd.*, 551 U.S. 308, 326 (2007) ("the court's job is not to scrutinize each allegation in isolation"). In addition to underperforming the S&P benchmark, the Amended Complaint alleges the Focus Funds underperformed three "through" target date funds. *See* Am. Compl. ¶¶ 71-78, 86-87, 93-94, 97; App. 75a-76a (reciting these allegations). It also alleges the Focus Funds experienced "high historical turnover rates," App. 25a, which "create increased transaction costs in the fund that necessarily detract from performance," Am. Compl. ¶ 59. The government overlooks these high turnover allegations, but they reinforce the underperformance allegations concerning the S&P benchmark. Collectively, they support reasonable inferences that petitioners acted imprudently by retaining the Focus Funds.

2. The government's contentions fail even on their own terms. The government's argument (at 11-16) that the Sixth Circuit "suggested" a comparator is unnecessary to plead an imprudence claim based on

underperformance mischaracterizes the decision below. Its argument (at 16-17) that the Amended Complaint fails to plead a meaningful benchmark impermissibly raises the pleading standard and fails to draw reasonable inferences in respondents' favor.

a. The government mischaracterizes the decision below in arguing (at 11) the Sixth Circuit "suggested that a plaintiff need not allege a meaningful benchmark" to state an imprudence claim based on underperformance. The court did no such thing; it explained that, although a plaintiff may "point to a higher-performing fund—in conjunction with additional context-specific evidence—to demonstrate imprudence," "a meaningful benchmark is not required to plead a facially plausible claim of imprudence." App. 18a-19a.

The Sixth Circuit's refusal to adopt a per se pleading requirement for imprudence claims "makes sense" because "prudence is a process-driven duty." App. 18a (cleaned up). Whether a fiduciary's process was prudent is "necessarily . . . context specific," "turn[ing] on 'the circumstances . . . prevailing' at the time the fiduciary acts." *Fifth Third Bancorp. v. Dudenhoeffer*, 573 U.S. 409, 425 (2014) (quoting 29 U.S.C. § 1104(a)(1)(B)) (second ellipsis in *Dudenhoeffer*). Imposing "categorical rule[s] is inconsistent with th[is] context-specific inquiry." *Hughes*, 595 U.S. at 173.

Nor has the decision below "created confusion," as the government asserts (at 16). Even petitioners concede that "everyone agrees that ERISA plaintiffs can plead imprudence without performance comparisons." Cert Reply Br. 3; *see* App. 54a (Murphy, J., dissenting) ("agree[ing]" that a "meaningful benchmark" is "not require[d] . . . in all cases"); *Anderson v. Intel Corp. Inv. Pol'y Comm.*, 137 F.4th 1015, 1023 (9th Cir.

2025) (similar), *petition for cert. pending*, No. 25-498 (U.S. Oct. 20, 2025). In any event, the Sixth Circuit did not hold that a sound comparator is unnecessary to plead imprudence based on performance comparisons; it held respondents had "in fact plead[ed] a meaningful benchmark in this case." App. 19a. In a case petitioners acknowledge (Cert Reply 4 n.1), the Sixth Circuit has since reaffirmed that pleading an ERISA breach-of-duty-of-prudence claim "usually requires identifying the alleged problematic financial metric and then comparing it to a 'meaningful benchmark.'" *England v. DENSO Int'l Am. Inc.*, 136 F.4th 632, 636 (6th Cir. 2025) (citation omitted).

To show "confusion," the government resorts to cherry-picking (at 15-16) snippets from two briefs. Citing private advocacy to claim a conflict is particularly weak support by the government. Those plaintiffs stretched the decision below past its breaking point, arguing that the Sixth Circuit does not require a valid comparator where there are "ulterior indicia that the challenged investments were imprudent." Reply Br. of Pl.-Appellant 4, *Wehner v. Genentech, Inc.*, 2025 WL 2505672 (9th Cir. Sept. 2, 2025) (No. 24-2630 (9th Cir. Dec. 6, 2024)), 2024 WL 6466373. The Ninth Circuit has had no trouble rejecting such claims where the complaint "lacks the factual content" to establish "'a sound basis for comparison.'" *Wehner v. Genentech, Inc.*, 2025 WL 2505672, at *1 (9th Cir. Sept. 2, 2025) (quoting *Anderson*, 137 F.4th at 1022).

b. The government's contentions (at 16-17) that the Amended Complaint fails to allege the S&P benchmark is a meaningful comparator to the Focus Funds disregard the pleading standard and draw inferences against respondents.

To proceed past the motion-to-dismiss stage, respondents had to "plead 'sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.'" App. 9a-10a (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). To state a plausible imprudence claim based on the Focus Funds' underperformance to the S&P benchmark, the Amended Complaint must contain "factual content that allows the court to draw the reasonable inference" that (1) the S&P benchmark is "a meaningful comparison," (2) which the Focus Funds "systematically underperformed," such that (3) "a prudent decision-making process . . . would have arrived at the conclusion that retaining the funds would not be in the Plan's best interest." App. 10a, 23a, 25a.

The Amended Complaint clears that bar. It alleges "the Focus Funds were 'designed to meet industry-recognized benchmarks,'" and "the S&P target date fund benchmark was the relevant 'industry-accepted target date benchmark[] for "Through"' target date funds.'" App. 19a (quoting Am. Compl. ¶¶ 67-68, 70) (brackets in opinion). Those allegations support the reasonable inference that the Focus Funds were "designed" to "share the same goals, strategies, and risks" as the S&P benchmark. *Id.* The Amended Complaint further alleges "the Focus Funds underperformed the S&P target date fund benchmark through at least 2014." *Id.* (citing Am. Compl. ¶¶ 86-87). From those allegations, "it is certainly plausible that a prudent administrative process would find such performance unacceptable and would result in the Focus Funds' replacement." App. 23a. That inference becomes even more plausible given allegations of the Focus Funds' high turnover.

The government draws the opposite inferences in arguing that the S&P benchmark cannot be a meaningful comparator without "details" about the benchmark's "risk profile, bond to equity ratio, and whether it follows a passive or active strategy." U.S. Br. 16-17 (cleaned up). The government also ratchets up the pleading standard by insisting (at 17) that respondents had to allege facts showing the Focus Funds were, "in fact, designed to match" the S&P benchmark to plead a valid comparator. These pleading requirements cannot be squared with "the context-specific inquiry that ERISA requires." *Hughes*, 595 U.S. at 173.

Requiring the allegations the government demands would thwart ERISA's goal of "providing . . . ready access to the Federal courts." 29 U.S.C. § 1001(b). It would erect an insuperable obstacle to pleading performance-based imprudence claims because "'ERISA plaintiffs generally lack the inside information necessary to make out their claims in detail unless and until discovery commences.'" App. 24a (quoting *Braden*, 588 F.3d at 598). It also would insulate from liability fiduciaries who imprudently offer bespoke investments with no precise comparator, leaving plan participants with no remedy even when those investments perform poorly against established indices.

In sum, there is no conflict over whether a benchmark must be pleaded in appropriate circumstances. The government's arguments therefore boil down to a factbound disagreement with the Sixth Circuit over the suitability of the Amended Complaint's particular benchmark allegations. And on that score, the government improperly construes the pleadings against respondents and ignores key allegations.

II. THE DECISION DOES NOT WARRANT REVIEW

A. There Is No Circuit Split

As respondents showed (BIO 11-18), no circuit split exists. The government's attempt to manufacture (at 18) a conflict with the Eighth and Ninth Circuits lacks merit. As in those circuits, the Sixth Circuit requires a plaintiff to allege facts to support the reasonable inference that the subject funds and the comparator share "the same strategies, objectives, and risks" to plead an imprudence claim based on underperformance. *Id.* Rather than reveal a conflict, the cases the government cites reflect the application of common legal standards to different facts.

In *Anderson*, the Ninth Circuit held the plaintiff failed to state an imprudence claim based on the performance of Intel's funds because he "did not plausibly allege that Intel's funds underperformed other funds with comparable aims." 137 F.4th at 1022. Rather than compare Intel's funds, which had adopted a "risk-mitigation objective," to "funds with similar risk-mitigation strategies," the plaintiff compared them to "equity-heavy retail funds that pursued different objectives—typically revenue generation." *Id.* at 1023. As a result, Intel's funds and the plaintiff's comparators "had 'different aims, different risks, and different potential rewards.'" *Id.* (quoting *Davis v. Washington Univ. in St. Louis*, 960 F.3d 478, 485 (8th Cir. 2020)).

Meiners v. Wells Fargo & Co., 898 F.3d 820 (8th Cir. 2018), also involved an inapt comparison. The plaintiff "only pled that one Vanguard fund . . . performed better than the Wells Fargo TDFs" the plan offered, but Wells Fargo funds had "a higher allocation of bonds than Vanguard funds." *Id.* at 823 & n.2

(cleaned up). Because the funds had "different investment strateg[ies]," the Vanguard fund's performance could "not establish anything about whether the Wells Fargo TDFs were an imprudent choice." *Id.*

Those imprudence claims would have met the same fate in the Sixth Circuit. *Smith v. CommonSpirit Health*, 37 F.4th 1160 (6th Cir. 2022), proves the point. There, the Sixth Circuit held the plaintiff failed to plead an imprudence claim because the subject funds and alleged benchmark had "distinct goals and distinct strategies, making them inapt comparators." *Id.* at 1167. This analysis, the Sixth Circuit observed, "line[d] up" with how the Eighth Circuit "has evaluated . . . similar claim[s]." *Id.* at 1166 (citing *Meiners*).

The government's reliance (at 19-20) on excessive-fee cases cannot give rise to a genuine split. Respondents explained (BIO 13) why those cases do not conflict with the decision below. The government offers no response.

The government incorrectly contends (at 20) that courts disallow comparisons to market indices. Petitioners "fail[ed] to point to any circuit court that has held that a market index can never serve as a meaningful benchmark," App. 21a, and the government identifies no such decision. The lone district court decision the government cites (at 20) is inapposite: the court dismissed the imprudence claim because the complaint contained "no factual allegations demonstrating that the Comparator TDFs are meaningful comparators to the BlackRock TDFs." *Hall v. Capital One Fin. Corp.*, 2023 WL 2333304, at *6 (E.D. Va. Mar. 1, 2023).

In contrast, the Eighth Circuit has "expressly held that market indices are appropriate meaningful points of comparison for passive funds." App. 21a (citing

Braden, 588 F.3d at 595-96). The Sixth Circuit thus "br[oke] no 'new ground'" in holding that respondents had plausibly alleged the S&P benchmark was a meaningful comparator to the Focus Funds. *Id.*

The government draws (at 21) a faulty analogy to the pleadings the Ninth Circuit rejected in *Wehner*. That complaint alleged only that the subject funds "function in the same manner as 'off-the-shelf' target date funds," whose superior performance the plaintiff claimed showed the subject funds were an imprudent choice. Am. Class Action Compl. ¶ 133, *Wehner v. Genentech, Inc.*, No. 3:20-cv-06894-WHO, ECF No. 46 (N.D. Cal. Mar. 1, 2021); *see Wehner v. Genentech, Inc.*, 2021 WL 2417098, at *8 (N.D. Cal. June 14, 2021) (rejecting allegations as "conclusory"), *aff'd*, 2025 WL 2505672 (9th Cir. Sept. 2, 2025). Those allegations are nothing like the allegations here, which the Sixth Circuit found "sufficiently pleaded that the Focus Funds were 'attempting to mimic' the S&P target date fund." App. 21a (citing Am. Compl. ¶¶ 51, 67-68).

B. This Is A Poor Vehicle To Address The Question Presented

The government offers no persuasive reason to deny that this case's interlocutory posture makes it a poor vehicle to address the question petitioners seek to present. *See* BIO 23-24. Like petitioners, the government turns a blind eye to allegations that the Focus Funds had "extremely high turnover" causing "substantial transaction costs." App. 12a (citing Am. Compl. ¶¶ 79-81). But those allegations bolster the plausibility of the Focus Funds underperformance. The government also fails to address respondents' share-class claim. That claim—which falls outside the question presented—also concerns the Focus Funds. *See* App. 30a-31a. Even if the Court grants certiorari

and reverses, discovery will proceed into petitioners' retention of the Focus Funds.

Respondents expect discovery will unearth ample evidence that petitioners' retention of the Focus Funds was imprudent. Indeed, the plans that retained the Focus Funds have faced lawsuits for breaching their fiduciary duties and have paid multi-million-dollar settlements to reimburse participants for their losses after extensive litigation. *See*, *e.g.*, Final Order and Judgment, *Binder v. PPL Corp.*, No. 5:22-cv-00133-MP, ECF No. 170 (E.D. Pa. Aug. 4, 2025) ($8.2 million settlement after discovery); Final Order and Judgment, *Conlon v. The Northern Tr. Co.*, No. 1:21-cv-02940, ECF No. 145 (N.D. Ill. July 29, 2025) (similar).

Because respondents' allegations of underperformance and turnover "give rise to an inference of deficient process in retaining the Focus Funds as an investment option," App. 26a, the Court should allow respondents' imprudence claims to advance.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

DAVID C. FREDERICK
ALEX P. TREIGER
KELLOGG, HANSEN, TODD, FIGEL & FREDERICK, P.L.L.C.
1615 M Street, N.W.
Suite 400
Washington, D.C. 20036
(202) 326-7900

SEAN E. SOYARS
Counsel of Record
JEROME J. SCHLICHTER
SCHLICHTER BOGARD LLC
100 South Fourth Street
Suite 1200
St. Louis, Missouri 63102
(314) 621-6115
(ssoyars@uselaws.com)

Counsel for Respondents

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