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

SUPPLEMENTAL 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.

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The United States persuasively explains why the Sixth Circuit erred in reversing dismissal of respondents' underperformance claim and why its decision conflicts with decisions of other courts of appeals and warrants review. Other circuits require allegations of comparative underperformance to be grounded in facts showing that the better-performing comparators had "similar investment strategies, similar investment objectives, [and] similar risk profiles to the plan's funds." U.S. Br. 11 (citation omitted). The Sixth Circuit, however, found respondents' underperformance allegations adequate even though "[r]espondents make no representations as to the S&P TDF benchmark's 'risk profile,' 'bond to equity ratio,' and whether it 'follow[s] a passive or active strategy.'" *Id.* at 16-17 (quoting Pet. App. 55a (Murphy, J., dissenting)). These omissions "deprive [respondents'] comparison of the factors that courts have generally required when assessing benchmarks." *Id.* at 17. By failing to require such allegations, the Sixth Circuit created a circuit conflict.

Respondents concede that other circuits require allegations showing that "the subject funds and the comparator share 'the same strategies, objectives, and risk' to plead an imprudence claim based on underperformance." Supp. Br. 8. But they disregard their failure to make such allegations about the S&P target date fund benchmark on which the Sixth Circuit's decision relies.

Instead, respondents double down on their mere allegation that target date fund performance is often

compared to the S&P target date fund benchmark, which they describe as an "industry-recognized" index. Supp. Br. 1. In their view, this allegation is enough to support "reasonable inferences that the S&P benchmark 'share[s] the same goals, objectives, and risks.'" *Id.* at 1-2. But respondents' reliance on this allegation only confirms the need for this Court's review.

First, respondents still do not deny that every ERISA complaint claiming underperformance could make the allegation that respondents deem sufficient about whichever benchmark the plaintiff wants to use to support the claim. See Cert. Reply Br. 2 ("Respondents do not deny that plaintiffs can *always* make the 'industry-recognized' allegations that sufficed for the majority below."). A meaningful-benchmark requirement that can always be met is not a meaningful requirement at all.

Second, respondents ignore that courts are already reaching diametrically opposed outcomes on the adequacy of respondents' allegation—based solely on whether they are bound by the Sixth Circuit's decision here. For example, one district court in the Sixth Circuit recently allowed an underperformance claim to proceed because the plaintiffs' "allegations parallel those the Sixth Circuit found sufficient to state a claim" in this case. *Fulton* v. *FCA US LLC*, No. 24-cv-13159, 2025 WL 2800003, at *7 (E.D. Mich. Sept. 30, 2025). There, much as here, the plaintiffs "alleged that S&P Indices [*i.e.*, the S&P target date fund benchmark] 'are the most common benchmark used to approximate the performance of the TDF industry.'" *Ibid.* So the district court considered itself "bound" by

the Sixth Circuit's decision here to accept that characterization and treat the S&P target date fund benchmark as a meaningful basis for comparison, refusing to follow decisions from courts in other circuits. *Ibid.*

Meanwhile, under Ninth Circuit precedent, the same allegation is rejected as conclusory. See *Wehner* v. *Genentech, Inc.*, No. 24-2630, 2025 WL 2505672, at * (9th Cir. Sept. 2, 2025). In *Wehner*, just like *Fulton*, the complaint described the S&P target date fund benchmark as "the most common benchmark used to approximate the performance of the target date fund industry." Amended Class Action Complaint ¶ 143, *Wehner* v. *Genentech, Inc.*, No. 20-cv-6894, 2021 WL 2417098 (N.D. Cal. June 14, 2021), ECF No. 46, aff'd, 2025 WL 2505672 (9th Cir. Sept. 2, 2025). But neither that allegation nor the complaint's other allegations provided "the factual content that *Anderson* requires to give rise to a plausible inference of breach of the duty of prudence." *Wehner*, 2025 WL 2505672, at *1 (citing *Anderson* v. *Intel Corp. Inv. Pol'y Comm.*, 137 F.4th 1015, 1022 (9th Cir. 2025)).

Another court within the Ninth Circuit recently applied *Anderson* to draw the same conclusion. It observed that the S&P target date fund benchmark "may include many different TDFs with varying strategies" and the plaintiffs did not allege "any other details about the underlying TDFs measured by the S&P Index, including their asset allocations or other considerations like fees." *Phillips* v. *Cobham Advanced Elec. Sols., Inc.*, No. 23-cv-3785, 2025 WL 2689268, at *6 (N.D. Cal. Sept. 19, 2025). So, under *Anderson*, the S&P target date fund benchmark is not "meaningfully similar." *Ibid.* (quoting *Anderson*, 137 F.4th at 1023).

There is no way to explain these inconsistent outcomes except by recognizing that they are based on inconsistent appellate precedent. Underperformance allegations that fail in the Ninth Circuit (or the Eighth Circuit) can proceed within the Sixth Circuit. The Court should grant certiorari to resolve this conflict, as the government urges.

Confronted with such clear evidence of a circuit split, respondents raise meritless objections to using this case as the vehicle to resolve the split. Supp. Br. 10-11. First, as petitioners have shown (Cert. Reply Br. 11) and as the government agrees (U.S. Br. 23), this Court often reviews decisions that reversed the grant of a motion to dismiss. That is not a vehicle problem. Neither is the existence of a separate claim that could proceed on remand. See Cert. Reply Br. 12. And finally, while respondents highlight their allegation about turnover in the Focus Funds' underlying investments (in 2013, before petitioners selected the Focus Funds), they ignore that the Sixth Circuit did not consider the turnover allegation sufficient "*on its own*," but only when "*coupled with* the [alleged] underperformance." Pet. App. 15a-16a; see also Pet. 25-26. Under the proper meaningful-benchmark test, there is no viable allegation of underperformance—as petitioner, the government, and Judge Murphy have explained—and thus no basis for the claim to proceed.

This Court should set aside the Sixth Circuit's contrary decision and bring harmony to ERISA pleading standards. As the government recognizes, this is "an issue of substantial importance to the millions of Americans participating in ERISA-governed plans."

U.S. Br. 22. This disagreement between the circuits needs this Court's resolution.

CONCLUSION

The petition for a writ of certiorari should be granted.

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