IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

MICHAEL J. IANNONE, JR., and NICOLE A. JAMES, as plan participants on behalf of the AUTOZONE, INC. 401(k) Plan, and on behalf of others similarly situated,	)	
Plaintiffs,	)	
v.	)	**No. 19-cv-2779-MSN-tmp**
AUTOZONE, INC., BILL GILES, BRIAN CAMPBELL, STEVE BEUSSINK, KRISTIN WRIGHT, MICHAEL WOMACK, KEVIN WILLIAMS, RICK SMITH, NORTHERN TRUST CORPORATION, and NORTHERN TRUST, INC.,	)	
Defendants.	)	

REPORT AND RECOMMENDATION

Before the court by order of reference is plaintiffs' Motion for Class Certification, filed on February 18, 2022. (ECF Nos. 173, 184.) AutoZone, Inc. ("AutoZone") responded on April 1, 2022, and plaintiffs filed a reply on April 21, 2022. (ECF Nos. 181, 183.) The undersigned heard oral argument on the motion on June 6, 2022. (ECF No. 158.) For the reasons below, it is recommended that the motion be granted in part.

I. PROPOSED FINDINGS OF FACT

A. Background

The present case involves claims arising under the Employee Retirement Income Security Act of 1974 ("ERISA") that are brought against AutoZone, members of the AutoZone investment committee ("Committee"), and the investment fiduciaries of the AutoZone 401(k) plan ("Plan"). (ECF No. 85 at PageID 1168-69.) Plaintiffs filed their original complaint on November 13, 2019, and filed an amended complaint on September 22, 2021, seeking class certification, damages, and injunctive relief. (ECF Nos. 1 & 85.) Plaintiffs Michael J. Iannone, Jr. and Nicole A. James are former AutoZone employees who were participants in the Plan during the putative class period. (ECF No. 173-1 at PageID 2539-40.) Iannone was invested in the Plan from October 1, 2013 to September 30, 2014 and James was enrolled from January 1, 2018 to March 31, 2018. (ECF No. 181 at PageID 2795.)

The Plan is a defined-contribution retirement plan funded through employee contributions and matching contributions from AutoZone. (ECF No. 85 at PageID 1175.) Northern Trust Investments, Inc. ("Northern Trust") was the Plan's ERISA 3(21) investment advisor and a fiduciary to the Plan. (Id. at PageID 1177.) Prudential Retirement Insurance and Annuity Company ("Prudential") served as the recordkeeper for the Plan. (Id. at

PageID 1242.) As of December 31, 2019, the Plan had approximately $675 million in assets and 18,000 participants with account balances. (Id. at PageID 1169.) The Plan is set up so that participants can select from two investment approaches: (1) a self-directed option whereby participants choose from the Plan's investment menu to construct their own investment portfolios; or (2) an asset allocation service option offered by Prudential called "GoalMaker," which allocated the participants' assets in a model portfolio based on their retirement goals and risk tolerance. (Id. at PageID 1175.) Participants who did not actively select an investment approach were placed into the GoalMaker option by default. (Id. at PageID 1198.)

During the putative class period, the Plan's investment menu included a stable value fund called the Prudential Guaranteed Income Fund ("GIC Fund"), eight to ten actively-managed mutual funds, three to four separate account funds, and a handful of passively-managed index funds. (Id. at PageID 1201.) In total, the Plan had twenty funds during the putative class period. (Id. at PageID 1203.) GoalMaker invested in sixteen of those funds: the GIC Fund, Pru Jennison Growth Z, PIMCO Total Return, Eagle Mid Cap Growth, QMA Mid Cap Value, Loomis Sayles Value Y, Delaware Value Fund Inst'l, Lord Abbett

Fundamental Equity A, Baron Small Cap Fund Inst'l, Boston Partners Small Cap Value II Inst'l, Target Small Cap Value, American Europacific Growth R4, Nationwide Geneva MidCap Growth Inst'l, Wells Fargo Small Company Growth R6, Loomis Sayles Core Plus Bond A, and Loomis Sayles Core Plus Bond N. ("GoalMaker Funds"). (Id.) The remaining four funds were Vanguard index funds: Vanguard Developed Markets Idx Adm, Vanguard Total Stock Market Idx Inst'l, Vanguard Total Bond Market Idx Inv, and Vanguard Total Bond Market Idx Adm. (Id.) The complaint challenges all of the accounts in the Plan with the exception of the Vanguard index funds. (Id.)

AutoZone was responsible for the selection of the GoalMaker Funds. (Id. at PageID 1196.) GoalMaker exclusively invested the participants' money in the actively-managed investment options available in the Plan, specifically the GIC Fund, separate accounts, and actively-managed mutual funds. (Id. at PageID 1203.) GoalMaker did not invest in any of the passively-managed Vanguard index funds. (Id.) The costs of Prudential's services were bundled into the fees of the investment options that participants selected through the Plan. (Id. at PageID 1242.)

B. The Class Claims

Plaintiffs seek to represent a class of AutoZone employees and retirees who participated in the Plan between November 11, 2013 and the date of judgment, alleging that defendants breached their fiduciary duties under ERISA by failing to monitor the fees and performance of the Plan's investments. (ECF No. 85 at PageID 1170.) Plaintiffs' one-count amended complaint, taken as a whole, alleges that AutoZone breached its fiduciary duties in violation of ERISA by 1) failing to monitor and remove the GIC Fund as an investment option; 2) utilizing GoalMaker, which allegedly steered participants into high-cost investment options to the benefit of Prudential and the detriment of Plan participants; and 3) failing to monitor the Plan's fees and expenses, including excessive stable value fund spread fees, investment management fees, sub account charges, transaction costs, distribution fees, and administrative expenses.

1. The GIC Fund

Plaintiffs allege that defendants breached their fiduciary duty by failing to monitor and remove the GIC Fund as an investment option. (Id. at 1209.) The GIC Fund was a propriety stable value fund managed by Prudential. (Id.) The fund was one of the GoalMaker Funds and was the Plan's single largest investment with between $50 and $100 million invested, equal to

fifteen to twenty percent of the Plan's total assets. (Id.) The amount of money invested in the fund was a direct result of the manner in which the Plan was structured and AutoZone's use of GoalMaker. (Id.) The GIC Fund is a general account product established pursuant to a contract between AutoZone and Prudential. (Id. at PageID 1211.) The GIC Fund investments were deposited by Prudential in its general account, which enabled Prudential to earn a "spread" representing the difference between the crediting rate and the returns earned by Prudential from general account funds. (Id. at PageID 1211-12.)

Plaintiffs claim that AutoZone did not have a viable methodology for monitoring the costs or performance of the GIC Fund. (Id. at PageID 1212.) There were identical or substantially identical products from Prudential and other stable value providers with higher crediting rates and lower spread fees. (Id. at PageID 1212-13.) According to plaintiffs, the GIC Fund consistently charged the AutoZone employees 200 basis points more and returned 200 basis points less than the very same type of fund offered by Prudential to other similarly situated retirement plans. (Id. at PageID 1213.) Plaintiffs assert that a prudent fiduciary, one who understands the pricing mechanism and informs itself of the crediting rates and spread

fees available in the market, would have known that the GIC Fund product would underperform and continue to consistently underperform. (Id. at PageID 1215.) According to plaintiffs, the GIC Fund was an imprudent investment that should have been removed from the Plan on the basis of the excessive spread fees alone. (Id. at PageID 1216.) Further, plaintiffs allege that AutoZone should have taken advantage of its bargaining power, as a plan with a $100 million stable value fund, and submitted requests for proposal ("RFP") to stable value fund providers. (Id. at PageID 1217.) AutoZone did not make a regular practice of submitting RFPs for the stable value fund, or for recordkeeping and other services. (Id. at PageID 1218.) Additionally, plaintiffs claim the funds comprising the GIC Fund were not adequately diversified. (Id. at PageID 1220.)

2. GoalMaker

Next, plaintiffs assert that defendants breached their fiduciary duty by utilizing GoalMaker. During the putative class period, between one-third to one-half of the Plan's investments were invested in GoalMaker Funds. (Id. at PageID 1196.) AutoZone, acting through the Committee, and Northern Trust were fully responsible as fiduciaries for both the GoalMaker allocations and the selection and monitoring of the funds in

which the GoalMaker participants invested. (Id.) Although GoalMaker is a Prudential product, Prudential did not have any fiduciary responsibility for the GoalMaker allocations. (Id.)

Plaintiffs contend that AutoZone promoted the GoalMaker product to Plan members. AutoZone represented to participants in its GoalMaker literature that "GoalMaker®'s ideal allocations are based on generally accepted financial theories that take into account the historic returns of different asset classes." (Id. at PageID 1196-97.) Participants who enrolled in Prudential's GoalMaker service could not change the recommended allocations without being disenrolled from the service. (Id. at PageID 1198.) Moreover, because AutoZone made GoalMaker the Plan's default investment option, a substantial portion of participants' retirement savings were, in turn, allocated by GoalMaker into higher fee funds. Id.

Plaintiffs claim that defendants breached their fiduciary duty in the selection process of the GoalMaker Funds. The actively-managed funds AutoZone selected for GoalMaker charged higher fees than passively-managed funds in the same asset classes. (Id. at 1199.) Plaintiffs acknowledge that it is not imprudent *per se* to pursue an active management investment strategy. (Id. at PageID 1230.) However, they claim that the

markets that defendants invested in were markets in which active management had a low likelihood of outperforming the market. (Id. at PageID 1230.)

According to plaintiffs, a prudent plan sponsor must understand and continually evaluate the plan's expenses, fees, and service providers. (Id.) Plaintiffs claim AutoZone not only approved the use of high-fee, actively-managed funds for GoalMaker, but also essentially excluded the use of low-fee index funds by not including them in the GoalMaker portfolios. (Id. at PageID 1201.) Plaintiffs allege that this led to immense costs. For example, the average annual expense ratios for the Plan's funds were six times higher than the average expense ratios for lower-cost Vanguard index funds invested in the very same asset classes. (Id. at PageID 1204.) This information was readily available to the Committee and Northern Trust at the time the decisions were made to select or retain the funds. (Id.) Plaintiffs also assert that AutoZone and Northern Trust did not monitor the performance of the GoalMaker portfolios to determine whether they performed as expected. Specifically, they failed to benchmark the GoalMaker portfolios, which was necessary to compare the fees and performance of the GoalMaker portfolios with target date portfolios. (Id. at PageID 1206-07.)

Plaintiffs point out that during Northern Trust's tenure, AutoZone did not have an investment policy statement ("IPS").[1] (Id. at PageID 1193.) Although an ERISA plan is not required to have an IPS, plaintiffs claim that it is generally considered a best practice to have one. (Id.) Plaintiffs assert that a fiduciary with a prudent process would have had an IPS that established the criteria for evaluating the performance of chosen fund options against their respective benchmarks. (Id. at PageID 1236.) Using this standard, the Plan would have been able to determine whether the additional costs of the actively-managed funds were justified by a reasonable expectation of additional returns. (Id.) Plaintiffs contend that in a well-managed plan, these funds would have been identified and removed for failure to satisfy the performance criteria of the IPS. (Id.)

Further, plaintiffs allege that Northern Trust had a conflict of interest because of its role as the investment manager of AutoZone's actively-managed funds. (Id. at PageID

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[1]An IPS outlines the roles of the parties involved with the plan investment process and details their investment responsibilities. It also sets forth objective guidelines and criteria for measuring and monitoring the fees and performance of the plan's investment options to verify that they satisfy the plan's investment objectives. (Id. at PageID 1193.)

1240.) According to plaintiffs, if Northern Trust had advised AutoZone to consider index funds as alternatives to the high-cost, actively-managed GoalMaker Funds, it would have put its own considerable compensation from the Plan at risk. (Id.)

3. Excessive Fees

Finally, plaintiffs allege that Northern Trust and AutoZone's selection process for the GoalMaker Funds was imprudent because it did not rely on an honest evaluation of the merits of the funds themselves, but on the need to pay revenue shares to Prudential. (Id. at PageID 1221.) The single largest category of fees in the Plan were investment management fees. (Id. at PageID 1222.) The GoalMaker Funds were substantially more expensive than readily-available low-cost index funds in the same asset classes. (Id. at PageID 1223.) Plaintiffs claim that AutoZone did not have a viable process for monitoring these fees. According to plaintiffs, there was no performance-based justification or other reason for AutoZone to waste plan participants' retirement savings on these additional fees. (Id. at PageID 1223-24.)

Plaintiffs also allege that AutoZone failed to monitor the transaction costs of the GoalMaker Funds. (Id. at PageID 1224.) The funds selected by GoalMaker had high turnover ratios and

high trading and market impact costs while the funds GoalMaker excluded had low trading costs. (Id. at PageID 1225.) Further, plaintiffs contend that AutoZone wasted a substantial amount of plan participants' retirement savings chasing excess returns. (Id. at PageID 1228.) Plaintiffs assert that AutoZone had a fiduciary duty to determine whether the substantial additional costs were in fact justified by realistically-evaluated return expectations. (Id.)

Plaintiffs claim that the high-fee funds selected by GoalMaker paid kickbacks to Prudential. (Id. at PageID 1242.) To be included in GoalMaker, a fund had to be managed by Prudential or its affiliates or pay fees to Prudential or its affiliates. (Id. at PageID 1244.) Plaintiffs allege that AutoZone and Northern Trust breached their fiduciary duty to act in the best interest of participants by linking the selection of investment options to the fees paid to service providers. (Id. at PageID 1242.) Plaintiffs claim that AutoZone should have asked for competitive proposals for recordkeeping fees and treated the payment of those fees and the selection of investments as separate and unrelated. (Id. at PageID 1243.) Further, plaintiffs assert that AutoZone breached its fiduciary duty to the Plan by failing to invest in available lower-cost share

classes in order to reduce fees and costs associated with fund management. (Id. at PageID 1247.) Plaintiffs contend that AutoZone and Northern Trust breached their fiduciary duties when selecting and utilizing a recordkeeper because they failed to issue an RFP for more than five years. (Id. at PageID 1255.)

C. Motion for Class Certification

Plaintiffs seek certification of a class defined as:

> All persons, other than Defendants, who were participants as of November 11, 2013 in Plan, including (i) beneficiaries of deceased participants who, as of November 11, 2013, were receiving benefit payments or will be entitled to receive benefit payments in the future, and (ii) alternate payees under a Qualified Domestic Relations Order who, as of November 11, 2013, were receiving benefit payments or will be entitled to receive benefit payments in the future; and (b) all persons, other than AutoZone, who have been participants or beneficiaries in either the Plan and had account balances in the Plan at any time between November 11, 2013 through the date of judgment.
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> Excluded from the Class are (a) any person who was or is an officer, director, employee, or a shareholder of 5% or more of the equity of any AutoZone or is or was a partner, officer, director, or controlling person of AutoZone; (b) the spouse or children of any individual who is an officer, director or owner of 5% or more of the equity of AutoZone; (c) Plaintiffs' counsel; (d) sitting magistrates, judges and justices, and their current spouse and children; and, (e) the legal representatives, heirs, successors and assigns of any such excluded person.

(ECF No. 173-1 at PageID 2540.) Defendants oppose certification, arguing that plaintiffs lack Article III standing to pursue claims as to funds in which they did not invest, and that plaintiffs have not established that they meet the Rule 23(a) requirements of commonality, typicality, and adequacy.[2] (ECF No. 181.)

II. PROPOSED CONCLUSIONS OF LAW

A. ERISA

ERISA governs employee benefit plans and establishes both the obligations of plan fiduciaries and the remedies for any breaches of their duties. Cassell v. Vanderbilt Univ., No. 3:16-cv-2086, 2018 WL 5264640, at *1 (M.D. Tenn. Oct. 23, 2018) (citing Tullis v. UMB Bank, 515 F.3d 673, 676 (6th Cir. 2008)). ERISA permits civil actions to be brought by the Secretary of Labor or by a participant, beneficiary, or fiduciary of a plan to seek appropriate relief on behalf of the plan. Id. (citing 29 U.S.C. § 1132(a)(2)). A plaintiff who brings suit under § 1132(a)(2) for breach of fiduciary duty does

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[2] Defendants also argue that plaintiffs' non-disclosure claim should not be certified because it must be brought under ERISA § 502(a)(3). (ECF No. 181 at PageID 2808.) In their reply, plaintiffs state that they "do not assert any claims for non-disclosure." (ECF No. 183 at PageID 3306.)

so in order to seek recovery on behalf of the plan. Id. (citing Soehnlen v. Fleet Owners Ins. Fund, 844 F.3d 576, 584 (6th Cir. 2016); Loren v. Blue Cross & Blue Shield of Mich., 505 F.3d 598, 608 (6th Cir. 2007)). "All relief under this section must go to the benefit of the ERISA plan itself." Id.

B. Standing

In order for the court to have jurisdiction over plaintiffs' claims, and before any decision on class certification can be made, the court must initially determine whether plaintiffs have standing to bring their claims. There are two components to the standing analysis: statutory and constitutional. Soehnlen, 844 F.3d at 581.

1. "Statutory Standing"

The Supreme Court has clarified that what has been termed "statutory standing" is actually not a standing issue, "but simply a question of whether the particular plaintiff has a cause of action under that statute." Soehnlen, 844 F.3d at 581 (citing Lexmark Int'l, Inc. v. Static Control Components, Inc., 572 U.S. 118, 125 (2014)). To have a cause of action under the ERISA statute, plaintiffs must be participants or beneficiaries of the plan at issue. 29 U.S.C. § 1132(a)(2). Defendants do not dispute that the plaintiffs were members of the Plan and thus

have "statutory standing". (ECF No. 181 at PageID 2798, n.8.) "The fact that the plaintiffs are former – not current – plan participants does not undermine their statutory standing under ERISA." DeFazio v. Hollister Emp. Share Ownership Tr., 612 F. App'x 439, 441 (9th Cir. 2015) (citing LaRue v. DeWolff, Boberg & Assocs., Inc., 552 U.S. 248, 256 (2008); Harris v. Amgen, Inc., 573 F.3d 728, 735 (9th Cir. 2009)). That said, a plaintiff who establishes "statutory standing" must still meet the requirements of Article III standing. Soehnlen, 844 F.3d at 581 (citing Loren, 505 F.3d at 606–07).

2. Constitutional Standing

Constitutional standing, also known as Article III standing, "requires the claimant to establish three things: (1) a concrete and particularized injury, actual or imminent, (2) traceable to the defendant, and (3) proof that a favorable outcome would redress the harm." Vonderhaar v. Village of Evendale, Ohio, 906 F.3d 397, 401 (6th Cir. 2018) (citing Lujan v. Defs. of Wildlife, 504 U.S. 555, 560 (1992)). Putative class representatives must demonstrate individual standing and cannot acquire such standing merely by virtue of bringing a class action. Soehnlen, 844 F.3d at 582 (citing Fallick v. Nationwide Mut. Ins. Co., 162 F.3d 410, 423 (6th Cir. 1998)). Once a

putative class representative has established Article III standing, they must then meet the additional criteria required by Rule 23 of the Federal Rules of Civil Procedure. Cassell, 2018 WL 5264640 at *4.

Defendants argue that the named plaintiffs lack Article III standing to bring certain claims in the amended complaint. (ECF No. 181 at PageID 2798.) Specifically, defendants point out that Iannone and James together only invested in ten of the sixteen funds at issue. (Id.) Defendants contend that named plaintiffs have not suffered any injury-in-fact as to the six remaining GoalMaker Funds and therefore lack standing to challenge those funds. (Id.) Additionally, defendants claim that because Iannone was invested in five funds from only October 1, 2013 to September 30, 2014, and that James was invested in seven funds from only January 1, 2018 to March 31, 2018, the plaintiffs lack standing to bring claims for the time periods in which they were not invested in the Plan.[3] (ECF No. 181 at PageID 2800.)

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[3] Defendants argue that "plaintiffs lack Article III standing in another respect" because they seek prospective relief to prevent future ERISA violations, including "enjoin[ing] . . . the use of GoalMaker." (ECF No. 181 at PageID 2800 n.12.) Defendants assert that the court should "refuse to certify Plaintiffs' claims for prospective relief on a classwide basis." (Id.) Although defendants may be correct in that the named plaintiffs as former plan participants would not be able to obtain prospective

As to this argument, the court finds particularly instructive the Sixth Circuit's opinion in Fallick v. Nationwide. Fallick concerned an ERISA suit where the defendant sought dismissal on the grounds that the named plaintiff was on a different insurance plan from that of some of the other potential class members. Fallick, 162 F.3d at 412. The claims in Fallick related to the "methodology used to determine benefits," which was common to all putative class members, regardless of the plan in which they were enrolled. Id. The Sixth Circuit held that Fallick did not have to be a member of every plan at issue to maintain ERISA class claims that challenged the defendant's common conduct across multiple plans. Id. at 422-23. As the Fallick court explained:

> Threshold individual standing is a prerequisite for all actions, including class actions. A potential class representative must demonstrate individual standing vis-as-vis the defendant; he cannot acquire such standing merely by virtue of bringing a class action. As this Court has made clear, however, "once an individual has alleged a distinct and palpable injury to himself he has standing to challenge a practice even if the injury is of a sort shared by a large class of possible litigants." Once his standing has been established, whether a plaintiff will be able to represent the putative class, including absent class members, depends solely on whether he is able to

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injunctive relief, that issue goes to the available remedies and not Article III standing or class certification.

> meet the additional criteria encompassed in Rule 23 of the Federal Rules of Civil Procedure. Thus, in the instant matter, once the district court correctly determined that Fallick had standing to bring suit under ERISA against Nationwide with respect to its application of reasonable and customary limitations to its determination of medical benefits — a methodology which, by Nationwide's own admission, it employs in all the benefits plans which Fallick wishes to include under the aegis of the proposed class — the court should then have analyzed whether Fallick satisfied the criteria of Rule 23 with respect to the absent class members.
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> Where, as here, the crux of an ERISA plaintiff's complaint concerns the methodology used to determine benefits, courts have recognized that the standing-related provisions of ERISA were not intended to limit a claimant's right to proceed under Rule 23 on behalf of all individuals affected by the challenged conduct, regardless of the representative's lack of participation in all the ERISA-governed plans involved. . . . The foregoing analysis supports our conclusion that once a potential ERISA class representative establishes his individual standing to sue his own ERISA-governed plan, there is no additional constitutional standing requirement related to his suitability to represent the putative class of members of other plans to which he does not belong.

Id. at 423-44 (internal citations and parentheticals omitted)[4].

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[4] Although insurance benefits were at issue in Fallick, rather than retirement benefits, insurance and retirement benefit protections arise under the same sections of the ERISA statute. Dover v. Yanfeng US Auto. Interior Sys., LLC, 563 F. Supp. 3d 678, 683 (E.D. Mich. 2021) (applying Fallick in the context of retirement benefits). Additionally, the Fallick court itself relied on a Fifth Circuit case involving a pension plan. Fallick, 162 F.3d at 423 (citing Forebush v. J.C. Penney Company, Inc., 994 F.2d 1101 (5th Cir. 1993) (abrogated by Dukes, 564 U.S. at 345)).

The majority of district courts within the Sixth Circuit have followed the reasoning in Fallick, holding that once a putative class representative establishes Article III standing, they may proceed under § 1132(a)(2) on behalf of the plan or other participants "even if the relief sought sweeps beyond his own injury." McCool v. AHS Mgmt. Co., Inc., No. 3:19-cv-01158, 2021 WL 826756, at *3 (M.D. Tenn. Mar. 4, 2021). For example, in McCool, plaintiffs alleged that defendants failed to evaluate investment options and adequately monitor those investments, which resulted in injuries to their retirement plan. Id. at *1. Defendants argued that plaintiffs lacked standing to assert claims related to funds in which they did not invest. Id. at *3. The court found that because plaintiffs' allegations related to an "imprudent process" that allegedly injured all plan participants, rather than a specific fund, plaintiffs had standing to bring the claim. Id.

Similarly, in Cassell, the court found that plaintiffs' allegations concerning recordkeeping and administrative fees challenged the practices of defendants, rather than specific funds. 2018 WL 5264640 at *1. The Cassell court stated, "a plaintiff who is injured in his or her own plan assets – and thus has Article III standing – may proceed under Section

1132(a)(2) on behalf of the plan or other participants even if the relief sought sweeps beyond his own injury." Id. at *3 (citing Fallick, 162 F.3d at 423). Further, the court explained that "the standing-related provisions of ERISA were not intended to limit a claimant's right to proceed under Rule 23 on behalf of all individuals affected by the challenged conduct, regardless of the representatives' lack of participation in all the ERISA-governed plans involved." Id. (citing Fallick, 162 F.3d at 423; Tullis v. UMB Bank, 515 F.3d 673, 680 (6th Cir. 2008)).

Likewise, in Dover, plaintiffs challenged their employer's selection and management of funds offered in their retirement plan. 563 F. Supp. 3d at 681. Defendants argued in a motion to dismiss that the named plaintiffs lacked standing because they did not participate in eleven of the challenged funds in the plan. Id. at 682. The Dover court relied on the Sixth Circuit's reasoning in Fallick and refused to grant the motion to dismiss on standing grounds. Id. at 683. In doing so, the court noted that the issue of standing "is more properly addressed at the class certification stage, because it pertains to whether the named plaintiffs may serve as appropriate class representatives." Id. at 684.

Defendants have cited, and the court in conducting its own research has found, only one district court opinion within the Sixth Circuit that has taken a contrary view.[5] In Yost v. First Horizon Nat'l Corp., plaintiffs alleged defendants breached their fiduciary duty to the First Horizon Corporation Savings Plan by investing assets in First Horizon Stock and "First Funds" (First Horizon's proprietary mutual funds) when it was no longer prudent to do so. No. 08-2293-STA-cgc, 2011 WL 2182262,

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[5] In addition to Yost, defendants rely on two distinguishable cases outside this circuit. See Perkins v. United Surgical Partners Int'l Inc., No. 3:21-CV-00973-X, 2022 WL 824839, at *4 (N.D. Tex. Mar. 18, 2022) (dismissing complaint for lack of standing because plaintiffs failed to allege "injury to their own investment accounts or their investment in any of the challenged funds"); In Re LinkedIn ERISA Litig., No. 5:20-cv-05704-EJD, 2021 WL 5331448, at *4 (N.D. Cal. Nov. 16, 2021) (dismissing a complaint for lack of standing when none of the plaintiffs alleged that they had personally invested in any of the challenged funds). In both cases, the complaints did not contain any allegations that the named plaintiffs were invested in *any* of the challenged funds. In the present case, named plaintiffs were invested in ten of the sixteen GoalMaker Funds, and thus have alleged an individualized injury. Defendants also cite to two district court cases in Tennessee that do not involve ERISA claims. See Roane Cty. v. Jacobs Eng'g Grp., Inc., 429 F. Supp. 3d 494, 495 (E.D. Tenn. 2019) (holding the county and two cities could not establish *parens patriae* standing to file lawsuit on behalf of their citizens' individual and collective interests); Tartt v Wilson Cty., No. 3:09-01179, 2015 WL 208943 (M.D. Tenn. Jan. 24, 2012) (analyzing whether proposed class representatives had Article III standing to bring disparate impact claims under Title VII and the Tennessee Human Rights Act). The court finds these non-ERISA cases inapplicable to the present case.

at *1 (W.D. Tenn. Jun. 3, 2011). In that case, the court held that a class representative must establish individual injury to their own interests in the plan. Id. at *6. Both putative class representatives had invested in First Horizon stock during the proposed class period. Id. Therefore, both representatives had standing to bring the claim regarding stocks. Id. However, only one had invested in First Funds, and thus only that named plaintiff could satisfy the injury-in-fact element of Article III standing as to those funds. Id. The court ultimately divided the proposed class into two separate classes, one comprised of plaintiffs with claims based on First Horizon stock, and the second of plaintiffs with claims based on First Funds. Id. at *7.

A majority of courts outside of the Sixth Circuit have found that plaintiffs who assert plan-wide misconduct have constitutional standing to challenge funds in which they were not personally invested. Boley v. Univ. Health Servs., Inc., 36 F.4th 124, 131-32 (3d Cir. 2022) ("Because each class representative invested in at least one fund with allegedly excessive fees, the Named Plaintiffs adequately alleged they suffered injury from Universal's imprudent investment evaluation process, and, accordingly, have standing to bring this claim.");

Enos v. Adidas America, Inc., No. 3:10-cv-01073-YY, 2021 WL 5622121, at *2 (D. Or. Nov. 30, 2021) (citing Braden v. Wal-Mart Stores, Inc., 588 F.3d 585, 591-92 (8th Cir. 2009) (holding that an ERISA plaintiff "may be able to assert causes of action which are based on conduct that harmed him, but which sweep more broadly than the injury he personally suffered"); Moreno v. Deutsche Bank Americas Holding Corp., No. 15-CV-09936-LGS, 2017 WL 3868803 (S.D.N.Y. Sept. 5, 2017) (allowing ERISA plaintiffs to sue on behalf of a putative class); Glass Dimensions, Inc. v. State Street Bank & Trust Co., 285 F.R.D. 169, 175 (D. Mass. 2012) (allowing an ERISA plaintiff to sue for injuries on behalf of a class because of an injury "rooted in Defendants' conduct in managing all [] lending funds as a group"); see also Kurtz v. Vail Corp., 511 F. Supp. 3d 1185, 1192 (D. Colo. 2021) (noting that decisions from the First, Second, Third, Fourth, Eighth, and Ninth Circuits have concluded that plaintiffs' non-investment in certain funds is a class certification question rather than a standing one)(citing Hay v. Gucci Am., Inc., No. 2:17-CV-07148, 2018 WL 4815558, at *1 (D.N.J. Oct. 3, 2018) (finding plaintiff had standing because she alleged "an injury rooted in Defendants' conduct in managing all the funds as a group); Cryer v. Franklin Templeton Res., Inc., No. C 16-4265

CW, 2017 WL 4023149, at *4 (N.D. Cal. July 26, 2017) (holding plaintiff had standing to sue for funds in which he did not invest or that outperformed because "the lawsuit seeks to restore value to and is therefore brought on behalf of the plan"); McDonald v. Jones, No. 4:16 CV 1346 RWS, 2017 WL 372101, at *2 (E.D. Mo. Jan. 26, 2017) ("[A] plan participant may seek recovery for the plan even where the participant did not personally invest in every one of the funds that caused an injury to the plan."); Taylor v. United Techs. Corp., No. 3:06CV1494(WWE), 2008 WL 2333120, at *3 (D. Conn. Jun. 3, 2008) (holding plaintiffs satisfied standing requirements "[b]ecause a retirement plan is an aggregation of its participants' individual accounts" and thus "any loss to the Plan causes a loss to the Plan's participants"); Walsh v. Marsh & McLennan Cos., Inc., No. CIV. JFM-04-0888, 2006 WL 734899, at *1 (D. Md. Feb. 27, 2006) (finding that it did not matter for constitutional standing that plaintiff did not invest in every fund offered)).

Plaintiffs' allegations concerning excessive investment management and recordkeeping fees challenge the *practices* of defendants, rather than specific funds. Cassell, 2018 WL 5264640 at *3. For example, plaintiffs contend that defendants failed to

monitor the Plan’s fees and expenses. These are allegations of an imprudent process that allegedly injured all investors in the GoalMaker funds, including the named plaintiffs, when a portion of those excessive fees were charged to all individual accounts. Plaintiffs have standing to bring claims related to excessive fees. Id.

Plaintiffs also allege that defendants’ process in choosing and monitoring the Plan’s investment menu resulted in injuries to the Plan. Further, plaintiffs claim that by utilizing GoalMaker, which exclusively steered Plan participants into those high-cost investment options, defendants continued to maintain imprudent investments. Although the named plaintiffs were only invested in ten of the sixteen GoalMaker Funds, plaintiffs challenge defendants’ conduct, which applies to all of the challenged funds. Therefore, the named plaintiffs have standing to pursue claims related to defendants’ allegedly imprudent selection and monitoring of funds, regardless of whether they personally were invested in all of the funds during the entire proposed class period. See Fallick, 162 F.3d at 422-23. Because the putative class representatives have demonstrated that they have standing to pursue these claims, the undersigned

now turns to the question of whether plaintiffs will be able to represent the putative class under Rule 23.

C. Class Certification

1. Standard for Certifying Class Actions

Before certifying a class, the court's task is to conduct a "rigorous analysis" of the requirements of Rule 23. Gen. Tel. Co. SW. v. Falcon, 457 U.S. 147, 161 (1982). A party seeking class certification must satisfy all the requirements of Federal Rule of Civil Procedure 23(a) and at least one of the requirements under Rule 23(b). Sprague v. Gen. Motors Corp., 133 F.3d 388, 397 (6th Cir. 1998) (citing In re Am. Med. Sys., Inc., 75 F.3d 1069, 1079 (6th Cir. 1996)). Federal Rule of Civil Procedure 23(a) provides:

> One or more members of a class may sue . . . as representative parties on behalf of all only if (1) the class is so numerous that joinder is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

Next, "the proposed class must satisfy at least one of the three requirements listed in Rule 23(b)." Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 345 (2011). Here, plaintiffs seek certification under Rule 23(b)(1), which permits maintenance of

a class action if prosecution of separate actions by individual class members would create a risk of:

> (A) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class; or
>
> (B) adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests[.]

Fed. R. Civ. P. 23(b)(1).

"Rule 23 does not set forth a mere pleading standard. A party seeking class certification must affirmatively demonstrate his compliance with the Rule — that is, he must be prepared to prove that there are *in fact* sufficiently numerous parties, common questions of law or fact, etc." Dukes, 564 U.S. at 350 (emphasis in original). This requires the court to conduct an analysis that frequently "will entail some overlap with the merits of the plaintiff's underlying claim." Id. at 351.

2. Class Definition

Plaintiffs ask the court to certify a class comprised of:

> All persons, other than Defendants, who were participants as of November 11, 2013 in Plan, including (i) beneficiaries of deceased participants who, as of November 11, 2013, were receiving benefit payments or will be entitled to receive benefit

> payments in the future, and (ii) alternate payees under a Qualified Domestic Relations Order who, as of November 11, 2013, were receiving benefit payments or will be entitled to receive benefit payments in the future; and (b) all persons, other than AutoZone, who have been participants or beneficiaries in either the Plan and had account balances in the Plan at any time between November 11, 2013 through the date of judgment.
>
> Excluded from the Class are (a) any person who was or is an officer, director, employee, or a shareholder of 5% or more of the equity of any AutoZone or is or was a partner, officer, director, or controlling person of AutoZone; (b) the spouse or children of any individual who is an officer, director or owner of 5% or more of the equity of AutoZone; (c) Plaintiffs' counsel; (d) sitting magistrates, judges and justices, and their current spouse and children; and, (e) the legal representatives, heirs, successors and assigns of any such excluded person.

(ECF No. 173-1 at PageID 2540-41.) Defendants argue that plaintiffs have not demonstrated that all putative class members were harmed by the alleged fiduciary breaches, and therefore the class definition is overbroad. (ECF No. 181 at PageID 2802.) Defendants contend that Plan participants who exclusively invested in unchallenged funds, specifically the Vanguard index funds, did not suffer any injury, and therefore lack standing. (Id.)

Because "Article III does not give federal courts the power to order relief to any uninjured plaintiff, class action or not," each class member must have standing. Jones v. Lubrizol

Advanced Materials, Inc., _ F. Supp. 3d _, 2022 WL 286718 at *8 (N.D. Ohio, Feb. 1, 2022) (citing TransUnion LLC v. Ramirez, _ U.S. _, 141 S. Ct. 2190, 2208 (2021)). Although the putative class members who did not invest in the GoalMaker Funds have statutory standing under ERISA as members of the Plan, those individuals have not suffered an injury-in-fact, and therefore lack Article III standing. 29 U.S.C. § 1132(a)(2); Soehnlen, 844 F.3d at 581 ("The mere fact that a plaintiff pays funds into a non-compliant plan, if an injury at all, is 'neither concrete nor particularized, and is instead, arguably conjectural and hypothetical' and therefore does not satisfy injury-in-fact.") (quoting Loren, 505 F.3d at 608). The undersigned finds defendants' argument to be well taken. Since the proposed Class definition includes "[a]ll persons . . . who were participants as of November 11, 2013 in Plan," it fails to exclude those persons who exclusively invested in the Vanguard index funds, who undisputedly did not suffer any harm from defendants' alleged conduct.

"District courts have broad discretion to modify class definitions." Powers v. Hamilton Cty. Pub. Def. Com'n, 501 F.3d 592, 619 (6th Cir. 2007). Therefore, the undersigned recommends limiting the proposed definition to exclude members of the Plan

who exclusively invested in the Vanguard index funds. Thus, the undersigned undertakes the Rule 23 evaluation of the following putative class:

> All persons, other than Defendants, who are or were participants as of November 11, 2013 in the Plan, *and invested in any of the GoalMaker Funds* including (i) beneficiaries of deceased participants who, as of November 11, 2013, were receiving benefit payments or will be entitled to receive benefit payments in the future, and (ii) alternate payees under a Qualified Domestic Relations Order who, as of November 11, 2013, were receiving benefit payments or will be entitled to receive benefit payments in the future.[6]
>
> Excluded from the Class are (a) any person who was or is an officer, director, employee, or a shareholder of 5% or more of the equity of any AutoZone or is or was a partner, officer, director, or controlling person of AutoZone; (b) the spouse or children of any individual who is an officer, director or owner of 5% or more of the equity of AutoZone; (c) Plaintiffs' counsel; (d) sitting magistrates, judges and justices, and their current spouse and children; and, (e) the legal representatives, heirs, successors and assigns of any such excluded person.

3. Numerosity

Rule 23(a)(1) requires that the class be "so numerous that joinder of all members is impracticable." Here, it appears that there are tens of thousands of Plan participants who invested in the GoalMaker Funds, which is certainly enough to meet the

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[6] Additionally, section (b) from the proposed class definition appears to be redundant with the first part of the definition and has been removed.

numerosity requirement. Further, defendants have stipulated that the numerosity requirement is met. (ECF No. 173-1 at PageID 2542.)

4. Commonality

Rule 23(a)(2) is satisfied where there are "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). Usually, "the question of defendants' liability for ERISA violations is common to all class members because a breach of fiduciary duty affects all participants and beneficiaries." Shirk v. Fifth Third Bancorp, No. 05-cv-049, 2008 WL 4425535, at *2 (S.D. Ohio Sept. 30, 2008).

The amended complaint identifies several questions of law and fact at issue in this case:

(1) whether the Defendants breached their fiduciary duties;

(2) the losses suffered by the Plan;

(3) whether the fiduciaries had policies and procedures to investigate the merits of the investments and to structure the investments;

(4) whether the fiduciaries had policies and procedures to monitor the prudence of the investments on an ongoing and regular basis;

(5) whether the fiduciaries followed any policies and procedures to monitor the prudence of the investments on an ongoing and regular basis, including but not limited to high cost funds as alleged;

(6) whether or not the fiduciaries discharged their duties with respect to the Plan solely in the interest of the participants and beneficiaries for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administration of the Plan; and,

(7) what equitable relief should be imposed to remedy the fiduciary breaches and to prevent future ERISA violations.

(ECF No. 172 at PageID 2051-52.) These questions are common to all putative class members. The fiduciary duties at issue were duties to the Plan; any breach of those duties would affect the Plan, its participants, and its beneficiaries. See Cassell, 2018 WL 5264640 at *4. Thus, the commonality requirement is satisfied.

5. Typicality

Rule 23(a)(3) requires that "the claims . . . of the representative parties be typical of the claims . . . of the class." A putative class representative's claim is typical if it "arises from the same event or practice or course of conduct that gives rise to the claims of other class members, and [the] claims are based on the same legal theory." Shirk, 2008 WL 4425535, at *3 (quoting Little Caesar Enter., Inc. v. Smith, 172 F.R.D. 236, 243 (E.D. Mich. 1997)). "The purpose of this requirement is to ensure that the class representatives have

suffered injuries in the same general fashion as absent class members." Id. (quoting In re Vitamins Antitrust Litig., 209 F.R.D. 251, 260 (D.D.C. 2002)). "The commonality and typicality requirements are closely related because they both help determine whether the claims of the named plaintiffs and those of the class are so interrelated that the interests of the absent class members will be protected." Cassell, 2018 WL 5264640 at *5 (citing Ross v. Abercrombie & Fitch Co., 257 F.R.D. 435, 444 (S.D. Ohio 2009)). "Typicality determines whether a sufficient relationship exists between the injury to the named plaintiff and the conduct affecting the class, so that the court may properly attribute a collective nature to the challenged conduct." Beattie v. CenturyTel, Inc., 511 F.3d 554, 561 (6th Cir. 2007) (quoting Sprague v. Gen. Motors Corp., 133 F.3d 388, 399 (6th Cir.1998) (en banc)). Importantly, the Sixth Circuit has stated that to satisfy typicality, "a representative's claim need not always involve the same facts or law, provided there is a common element of fact or law." Id. (quoting Senter v. Gen. Motors Corp., 532 F.2d 511, 525 n.31 (6th Cir. 1976)).

Defendants argue that because putative class members made different investment decisions, which resulted in different

management and administrative fees, the plaintiffs' claims cannot be typical. The undersigned is unpersuaded by this argument. The Sixth Circuit has consistently held that representative claims "need not always involve the same facts or law" as the claims of the class in order to be typical. See, e.g., Bittinger v. Tecumseh Products Co., 123 F.3d 877, 884 (6th Cir. 1997) ("That the evidence varies from plaintiff to plaintiff would not affect this basic claim."); see also Rankin v. Rots, 220 F.R.D. 511, 518 (E.D. Mich. 2004) ("Typicality may exist where there is a very strong similarity of legal theories, even if substantial factual distinctions exist between the named and unnamed class members."). But see Spano v. Boeing Co., 633 F.3d 574, 586 (7th Cir. 2011) ("[I]t seems that a class representative in a defined-contribution case would at a minimum need to have invested in the same funds as the class members."). The fact that class members may be subject to an individual analysis of damages does not defeat typicality. See, e.g., Beattie, 511 F.3d at 562 (stating that factual differences in class claims, even where some class members benefitted from the defendant's conduct, "go[] only to the issue of damages and do[] not preclude a finding that the typicality requirement is satisfied"); Olden v. LaFarge Corp., 383 F.3d 495, 508-09 (6th

Cir. 2004) (stating that "individual damage determinations" did not defeat class typicality). As the Sixth Circuit explained when addressing a similar typicality challenge raised in Bittinger,

> Finally, the defendants argue that the varying level of injury among class members should preclude class certification. In particular, they contend that because Bittinger accepted benefits under the partially-funded alternate plan, and because he "did not protest increased benefit costs" after 1984, he did not suffer the same injury suffered by all members of the class. This argument is also without merit. Though the level of claimed injury may vary throughout the class — a common feature of class actions routinely dealt with at a remedial phase — the basic injury asserted is the same: Tecumseh violated the terms of the collective bargaining agreements by unilaterally terminating fully-funded lifetime benefits. As noted above, those differences that exist — including the individual estoppel claims — can be dealt with through methods other than denial of class certification, at a later stage in the proceeding.

123 F.3d at 884-85.

Here, the named plaintiffs' claims arise from the same alleged misconduct by defendants towards the putative class members and are based upon the same legal theories concerning alleged breaches of fiduciary duties. Plaintiffs' proof of breach and causation will focus on the same course of conduct that gives rise to the claims of other class members, namely the conduct of the defendant-fiduciaries, and not the individual

acts of the class members. The typicality requirement is satisfied.

6. Adequacy

Rule 23(a)(4) requires the court to determine whether "the representative parties will fairly and adequately protect the interests of the class." This requirement calls for a two-pronged inquiry: "(1) the representatives must have common interests with unnamed members of the class, and (2) it must appear that the representatives will vigorously prosecute the interests of the class through qualified counsel." Shirk, 2008 WL 4425535, at *3 (quoting Senter, 532 F.2d at 525). Rule 23(a)(4) tests "the experience and ability of counsel for plaintiffs and whether there is any antagonism between the interests of the plaintiffs and other members of the class they seek to represent." Id. (quoting Cross v. Nat'l Trust Life Ins. Co., 553 F.2d 1026, 1031 (6th Cir. 1977)). "A court may deny class certification when class representatives have so little knowledge of and involvement in the class action that they would be unable or unwilling to protect the interests of the class against the possibly competing interests of the attorneys." Cassell, 2018 WL 5264640 at *5 (citing Ross, 257 F.R.D. at 443). "However, it is well established that a named plaintiff's lack

of knowledge and understanding of the case is insufficient to deny class certification unless his ignorance unduly impacts his ability to vigorously prosecute the action.” Id. (citing City of Goodlettsville v. Priceline.com, Inc., 267 F.R.D. 523, 531 (M.D. Tenn. 2010)). The burden of demonstrating that class representatives meet this standard is not a difficult one. Id. Regarding the first prong, defendants argue that there are interclass conflicts because “some party members claim to have been harmed by the same conduct that benefitted other members of the class.” (ECF No. 181 at PageID 2807) (quoting Valley Drug Co. v. Geneva Pharm., Inc., 350 F.3d 1181, 1189 (11th Cir. 2003)). Defendants posit that Plan participants who invested during different periods did not experience poor performance or suffer injury. Thus, inclusion of these individuals in the class would create conflict. The undersigned disagrees. The putative class representatives are former AutoZone employees and participants in the Plan who allege that defendants breached their fiduciary duties under ERISA by failing to monitor the fees and performance of the Plan’s investments. The fact that some members of the class suffered losses when others may have experienced gains is an issue that will be resolved at the damages stage rather than during class certification. See

Beattie, 511 F.3d at 562; Bittinger, 123 F.3d at 884-85. Moreover, participants who reaped gains still would have been injured by excessive fees. The interests of the named plaintiffs are sufficiently aligned with those of the class members to satisfy the first prong of the adequacy requirement. Shirk, 2008 WL 4425535, at *3.

As to the second prong, defendants argue that plaintiffs' testimony suggests that they will not vigorously prosecute the action because they "lack even a basic understanding of their claims." (ECF No. 181 at PageID 2806-07.) However, "the complex nature of ERISA fiduciary breach claims requires investors to rely on their attorneys and hired experts, and such reliance does not make the plaintiffs inadequate representatives." Cassell, 2018 WL 5264640 at *5 (quoting Sims v. BB&T Corp., No. 1:15-CV-732, 2017 WL 3730552 at *5 (M.D.N.C. Aug. 28, 2017)). Both plaintiffs have expressed their commitment to prosecute this action on behalf of the class and to assist their attorneys in fully litigating this case. Additionally, the putative class representatives have retained class counsel with experience in ERISA litigation who defendants stipulate are adequate class counsel. (ECF No. 182 at PageID 2971.) Accordingly, the putative

class representatives are adequate class representatives and satisfy the requirements of Rule 23(a)(4).

7. Rule 23(b)

In addition to meeting the requirements of Rule 23(a), a party seeking to certify a case as a class action must also satisfy one of the subdivisions under Rule 23(b). Courts have routinely found ERISA breach of fiduciary duty cases, like this one, to be appropriate for certification under Rule 23(b)(1). Shirk, 2008 WL 4425535, at *4. Plaintiffs seek certification under Fed. R. Civ. P. 23(b)(1)(A) or (B), which provides:

> (b) A class action may be maintained if Rule 23(a) is satisfied and if:
>
> (1) prosecuting separate actions by or against individual class members would create a risk of:
>
> (A) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class; or
>
> (B) adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests.

The undersigned finds that plaintiffs' ERISA claims are suitable for class treatment under subparagraphs (A) and (B) of Rule 23(b)(1).

Plaintiffs' class certification claims are suitable for class treatment under subparagraph (A) of Rule 23(b)(1) because plan-wide relief in the case at bar will insulate defendants from the risk of incompatible court orders and judgments. Yost, 2011 WL 2182262 at *14; see also Harris v. Koenig, 271 F.R.D. 383, 394 (D.D.C. 2010)("[T]his Court could enter a ruling to restore Plan assets, remove Plan fiduciaries, or reform Plan investigative practices and monitoring practices that would directly contradict another Court's ruling on the very same issues"); Jones v. NovaStar Financial, Inc., 257 F.R.D. 181, 193–94 (W.D. Mo. 2009) ("If one court ordered full restitution to the Plan and removal of the fiduciaries, but another ordered differently, those orders would establish incompatible standards of conduct for Defendants."); In re Merck & Co., Inc. Securities, Derivative & ERISA Litig., MDL No. 1658(SRC), 2009 WL 331426, at *12 (D.N.J. Feb. 10, 2009) ("A Court adjudicating a suit by an individual plaintiff would determine the issues of the existence of the fiduciary duty and its breach not in relation to the individual plaintiff, but in relation to the entire plan."); Kanawi v. Bechtel Corp., 254 F.R.D. 102, 111 (N.D. Cal. 2008) ("[T]here are over 17,000 potential plaintiffs who could individually file suit for damages arising from the

same conduct. This would create a risk of 'inconsistent and varying' adjudications. . . ."). Because there is a possibility that defendants could face inconsistent court orders imposing "incompatible standards of conduct," the undersigned finds class certification is appropriate under Rule 23(b)(1)(A).

The court also finds that certification is appropriate under Rule 23(b)(1)(B). The Rule's Advisory Committee notes provide:

> [Rule 23(b)(1)(B)] takes in situations where the judgment in a non-class action by or against an individual member of the class, while not technically concluding the other members, might do so as a practical matter. The vice of an individual action would lie in the fact that the other members of the class, thus practically concluded, would have had no representation in the lawsuit . . . [This] reasoning applies to an action which charges a breach of trust by an indenture trustee or other fiduciary similarly affecting the members of a large class of security holders or other beneficiaries, and which requires an accounting or like measures to restore the subject of the trust.

Fed. R. Civ. P. 23(b)(1)(B) Advisory Committee's Note (1966 Amendment).

The scenario described in the Advisory Committee Notes reflects the situation presented in the instant case. An ERISA action to enforce fiduciary duties is brought in a representative capacity on behalf of the plan as a whole. Shirk, 2008 WL 4425535, at *4. "Given this nature of an ERISA claim

which authorizes Plan-wide relief, there is a risk that failure to certify the class would leave future plaintiffs without relief[.]" Id. Because an individual ERISA action to remedy breaches of fiduciary duties would substantially impair or impede the ability of absent beneficiaries and participants to protect their interests, the undersigned finds class certification is appropriate under Rule 23(b)(1)(B).

III. RECOMMENDATION

The undersigned finds that plaintiffs have met their burden to show that class certification is appropriate under Rule 23(a) and (b). The undersigned recommends the following:

- The following class be certified, as modified:

> All persons, other than Defendants, who are or were participants as of November 11, 2013 in the Plan, and invested in any of the GoalMaker Funds including (i) beneficiaries of deceased participants who, as of November 11, 2013, were receiving benefit payments or will be entitled to receive benefit payments in the future, and (ii) alternate payees under a Qualified Domestic Relations Order who, as of November 11, 2013, were receiving benefit payments or will be entitled to receive benefit payments in the future.
>
> Excluded from the Class are (a) any person who was or is an officer, director, employee, or a shareholder of 5% or more of the equity of any AutoZone or is or was a partner, officer, director, or controlling person of AutoZone; (b) the spouse or children of any individual who is an officer, director or owner of 5% or more of the equity of AutoZone; (c) Plaintiffs' counsel; (d) sitting magistrates, judges and justices, and their current spouse and children; and, (e) the legal

representatives, heirs, successors and assigns of any such excluded person.

- Count I: breach of fiduciary duty, be certified.
- Michael J. Iannone, Jr. and Nicole A. James be appointed as class representatives.
- Plaintiffs' counsel James White Firm LLC, Law Office of Lange Clark, P.C., and Wiggins Childs Pantazis Fisher & Goldfarb, LLC be appointed as class counsel.

Respectfully submitted,

s/ Tu M. Pham
TU M. PHAM
Chief United States Magistrate Judge

August 12, 2022
Date

NOTICE

WITHIN FOURTEEN (14) DAYS AFTER BEING SERVED WITH A COPY OF THIS REPORT AND RECOMMENDED DISPOSITION, ANY PARTY MAY SERVE AND FILE SPECIFIC WRITTEN OBJECTIONS TO THE PROPOSED FINDINGS AND RECOMMENDATIONS. ANY PARTY MAY RESPOND TO ANOTHER PARTY'S OBJECTIONS WITHIN FOURTEEN (14) DAYS AFTER BEING SERVED WITH A COPY. 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b)(2); L.R. 72.1(g)(2). FAILURE TO FILE OBJECTIONS WITHIN FOURTEEN (14) DAYS MAY CONSTITUTE A WAIVER OF OBJECTIONS, EXCEPTIONS, AND FURTHER APPEAL.