

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

MELVIN DAVIS, WAYNE
ANDERSON, SHAWNETTA
JORDAN, and DAKOTA KING,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

MAGNA INTERNATIONAL OF
AMERICA, INC., et al.,

Defendants.

Case No. 2:20-cv-11060-NGE-RSW

Hon. Nancy G. Edmunds

Magistrate R. Steven Whalen

**DEFENDANTS' NOTICE OF SUPPLEMENTAL AUTHORITY
AND RESPONSE TO PLAINTIFFS' NOTICE
OF SUPPLEMENTAL AUTHORITY**

Defendants submit this notice to bring to the Court's attention the recent decision in *Kurtz v. Vail Corp.*, No. 20-cv-500, 2021 WL 50878 (D. Colo. Jan. 6, 2021), attached as Exhibit A. In addition, Defendants respond to Plaintiffs' Notice of Supplemental Authority (Dkt. 23) regarding *Miller v. AutoZone, Inc.*, No. 19-cv-2779, 2020 WL 6479564 (W.D. Tenn. Sept. 18, 2020).

Kurtz supports Defendants' motion to dismiss. *See* Dkt. 14 at 9–17. It dismissed with prejudice a claim that a 401(k) plan should have offered less expensive, passively managed investment options rather than actively managed

mutual funds and higher-cost share classes of certain funds. *Kurtz*, 2021 WL 50878, at *7–12. In particular, the court held that the plaintiff had not plausibly alleged that the inclusion of actively managed funds on the plan’s menu was imprudent; not only did the menu include other, cheaper options—including passively managed funds—that the plaintiff did not challenge, but there also were no allegations of “self-interested dealing, kickbacks, or inappropriate influence.” *Id.* at *8, *10. The same is true here: there are many options on the Magna Plan menu that Plaintiffs have not challenged, including passively managed options, and there are no allegations of self-interested conduct. *See, e.g.*, Compl. ¶¶ 81, 101, 103; Dkt. 14 at 3–4, 16. The *Kurtz* court also rejected the theory asserted here that the selection of higher-cost share classes suggests imprudence. Compl. ¶¶ 84–97; Dkt. 14 at 12–14. The court reviewed case law across jurisdictions and concluded that such allegations are not enough to state a claim. *Kurtz*, 2021 WL 50878, at *10.

Asking the Court to swim against the tide of case law, Plaintiffs argue that *AutoZone*—a case decided months ago—supports their challenge to the Magna Plan’s use of actively managed funds and higher-cost share classes, as well as the reasonableness of the recordkeeping fees. Dkt. 23. But Plaintiffs’ argument ignores important differences between the allegations in *AutoZone* and those here. First, *AutoZone* involved a challenge to actively managed mutual funds and separate

accounts on the basis that those options not only had excessively high fees, but also had “hidden trading costs.” 2020 WL 6479564, at *7–8. Plaintiffs have not claimed that any options on the Magna Plan’s menu had any sort of “hidden” costs. Second, unlike *AutoZone*, the Complaint here discusses revenue sharing, Compl. ¶¶ 96, 111–14, 117–18, and Plaintiffs do not dispute that the benefit from revenue sharing is a legitimate reason to choose higher-cost share classes, Dkt. 17 at 17–18. Courts have routinely dismissed claims where the complaint provides such an “obvious alternative explanation” for the challenged action. *See, e.g.*, Dkt. 18 at 4–5 (collecting cases). Third, with regard to their claim about the Plan’s recordkeeping fees, and also unlike the plaintiffs in *AutoZone*, Plaintiffs have pleaded themselves out of court by relying on sources showing that the Magna Plan’s fees were lower than the average fees for other plans. *See* Dkt. 14 at 19–20 (discussing Compl. ¶¶ 119, 122); *see e.g.*, Dkt. 18 at 6–7.

Dated: January 20, 2021

Respectfully submitted,

By: /s/ Mark B. Blocker

Mark B. Blocker (IL Bar No. 6198950)

Eric S. Mattson (IL Bar No. 6225572)

Benjamin I. Friedman (IL Bar No.

6317623)

Caroline A. Wong (IL Bar No. 6324863)

M. Caroline Wood (IL Bar No. 6330652)

Sidley Austin LLP

One South Dearborn St.

Chicago, IL 60603

Telephone: (312) 853-7000
Facsimile: (312) 853-7036
mblocker@sidley.com
emattson@sidley.com
benjamin.friedman@sidley.com
caroline.wong@sidley.com
cwood@sidley.com

Counsel for Defendants

Thomas G. McNeill (P36895)
Dickinson Wright PLLC
500 Woodward Avenue, Suite 4000
Detroit, MI 48226
(313) 223-3500
tmcneill@dickinson-wright.com

*Local Co-Counsel for Defendants
Pursuant to Local Rule 83.20(f)*

CERTIFICATE OF SERVICE

I hereby certify that on January 20, 2021, I electronically filed the foregoing Defendants' Notice of Supplemental Authority and Response to Plaintiffs' Notice of Supplemental Authority with the Clerk of the Court using the CM/ECF system, which will send notification of the filing to all attorneys of record.

/s/ Mark B. Blocker

Mark B. Blocker
Sidley Austin LLP
One South Dearborn St.
Chicago, IL 60603
Telephone: (312) 853-7000
Facsimile: (312) 853-7036
mblocker@sidley.com

Counsel for Defendants