

**THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION**

HOPE M. CARR, et al.,)
)
)
 Plaintiffs,)
)
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 v.)
)
)
 AUTOZONERS, LLC, and)
 AUTOZONE STORES, INC.,)
)
)
 Defendants.)

Case No.: 5:15-cv-00356-AKK

**DEFENDANTS' BRIEF IN SUPPORT OF
MOTION TO DECERTIFY THE COLLECTIVE ACTION**

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I. PROCEDURAL BACKGROUND

Plaintiffs filed this collective action seeking unpaid overtime. After Notice was approved, 1,571 Store Managers ("SM") joined the action during the opt-in period. AutoZone has deposed 24 Plaintiffs in this case and 3 SMs in a companion case. AutoZone moves to decertify the class based on the record evidence.¹

II. FACTUAL BACKGROUND

A. AutoZone's Organizational Structure

AutoZone operates over 6,000 stores in the United States, Puerto Rico, Mexico and Brazil. Ex. 12, Glasscock Dec. ¶3. AutoZone stores are organized into Division, Region, District and individual stores. *Id.* at ¶4. Each Region is divided into separate Districts that include 7 to 15 stores. *Id.* at ¶6.

There are no standard AutoZone stores. Within a single Region, stores may range from 2,400 to over 41,000 square feet. *Id.* at ¶7. Depending on sales volume, hours of operation, and services offered, an AutoZone store could include anywhere from 3 to over 100 employees ("AutoZoners") in many positions. *Id.* at ¶8-11.

AutoZone's 800 **Retail** stores employ AutoZoners in various hourly positions such as Assistant Store Manager ("ASM") and Parts Sales Manager ("PSM"); these lead positions are referred to as "Gray Shirts." The stores also employ AutoZoners

¹ AutoZone also cites to the sworn fact-specific declarations from non-opt-in Store Managers who worked in the same Districts as some Plaintiffs. Ex. 26, Smith Dec. ¶¶3-21.

in full- or part-time sales positions and refer to them as "Red Shirts." *Id.* at ¶9. The average weekly sales volume for these stores can range from \$7,000 to over \$100,000, and the total number of employees ranges between 5 and 20 or more. *Id.*

AutoZone also has **Commercial** stores that provide both retail services for AutoZone's DIY customers and distribution services for commercial accounts. Commercial stores employ additional hourly positions such as Commercial Sales Managers ("CSM"), Commercial Specialists ("CS"), and Drivers. *Id.* at ¶10. The total number of employees at each Commercial store can vary between 3 and 40. *Id.* There are approximately 5,000 AutoZone Commercial stores. *Id.*

Finally, AutoZone has approximately 200 **Hub** stores that provide retail and commercial services but also act as distribution centers for surrounding AutoZone locations. *Id.* at ¶11. Hub stores employ additional hourly Gray Shirts in positions such as Hub Coordinators and Hub Specialists. *Id.* The total number of employees at each Hub store varies between 15 and over 100. *Id.*

B. The Store Manager Position

AutoZone SMs are exempt executive employees.² *See* 29 C.F.R. §§ 213(a)(1);

² *See* Ex. 37, O'Neal Expert Report, p. 5 ("My analysis leads me to conclude that Plaintiffs qualified for the executive exemption during their period of employment by AutoZone as a store manager. I further believe that WHD, given the circumstances present in this matter and following its own investigative process, would likely find Plaintiffs to have been properly classified as exempt under Section 13(a)(1) of the FLSA and Regulations Part 541, and to have been paid in compliance with the Act.").

541.102; 541.700. Each AutoZone store operates under the direction and supervision of a single SM, who is the highest-level employee in the store. *Id.* at ¶14. All store level employees report directly to the SM.³ Deposed SMs consistently agree they are in charge of their store.⁴ SM is the highest paid employee in the store, the only store level position paid on a salary basis, and the only employee at the store level who is eligible for an incentive bonus based upon the store's overall financial performance. *See* Ex. 7, Barber Dec. ¶¶3, 5; Ex. 12, Glasscock Dec. ¶¶15-16.

C. Store Manager Job Duties

1. SMs Have Managerial Job Duties.

AutoZone requires SMs to perform the following managerial job duties and responsibilities: lead day-to-day operations within a single unit store; hire, train, and retain high performing AutoZoners; drive sales, control expenses and shrink; staff and schedule personnel to meet customer needs; maintain all store financial targets; provide performance counseling and discipline; and address customer complaints.⁵

2. SM Job Duties Vary By Store

³ *Id.*; *see also e.g.* Ex. 48, Harris Depo. at 16:3-17:4; Ex. 52, Lakes Depo. at 10:17-11:22; Ex. 55, Manginelli Depo. at 34:8-35:2, 36:24-37:8; Ex. 66, Wood Depo. at 16:14-18.

⁴ *See* 29 CFR 541.103(b); *see also e.g.* Ex. 41, Beltran Depo. at 176:8-18; Ex. 44, Davis Depo. at 128:1-2; Ex. 50, James Depo. at 56:12-15; Ex. 51, Joseph Depo. at 28:1-17.

⁵ *See* Ex. 1, Allen Dec. ¶14 & Ex. 1.

The differences in store structure,⁶ sales volume,⁷ location,⁸ services offered (e.g., Retail,⁹ Commercial,¹⁰ Hub¹¹), and staff turnover¹² directly impact the work of SMs.¹³ The SM Job Description makes clear that all SMs do not have identical job duties. For example, Retail SMs **do not** and **cannot** "[a]ssist with management of the Commercial Department (as applicable) to ensure commercial accounts are serviced and deliveries are made as promised" because **commercial services are not even offered in Retail stores**. There are differences in the execution of each job duty listed in the SM Job Description based on the particular circumstances.

3. SM Job Duties Vary by District Manager Involvement

SMs report to a District Manager ("DM"), each of whom has 7 to 15 stores in their respective District. Ex. 12, Glasscock Dec. ¶6. Because DMs support multiple

⁶ See, e.g., Ex. 42, Bryant Depo. at 80:5-11; Ex. 50, James Depo. at 85:22-86:1; Ex. 61, Rosales Depo. at 43:25-44:15; Ex. 13, Greene Dec. ¶34.

⁷ See, e.g., Ex. 39, Allen Depo. at 78:1-7; Ex. 55, Manginelli Depo. at 41:10-23; Ex. 57, Mobley Depo. at 27:11-28:7.

⁸ Ex. 42, Bryant Depo. at 44:6-18; Ex. 61, Rosales Depo. at 44:22-45:4; Ex. 63, Santiago Depo. at 75:9-76:15.

⁹ Ex. 44, Davis Depo. at 47:15-48:23, 62:20-64:4; Ex. 27, Stevens Dec. ¶10; Ex. 35, Whitfield Dec. ¶6.

¹⁰ **Compare** Ex. 57, Mobley Depo. at 163:22-167:17; Ex. 58, Moore Depo. at 53:1-12 **with** Ex. 54, Loveday Depo. at 79:21-81:15.

¹¹ See, e.g., Ex. 42, Bryant Depo. at 34:4-35:18, 77:8-18; Ex. 61, Rosales Depo. at 21:8-24:11; Ex. 9, Cleveland Dec. ¶9.

¹² **Compare** Franklin Depo. 67:13-19 **with** Ex. 54, Loveday Depo. at 20:15-21:5.

¹³ See Ex. 38, Robicheaux Expert Report, p. 9.

stores, they do not work full-time at any particular location.¹⁴ Plaintiffs' testimony demonstrates material distinctions in the oversight a particular DM may exert over a SM.¹⁵ Because many Plaintiffs have been assigned and reported to different DMs during the relevant period, DM oversight can differ materially for the **same SM**.¹⁶

III. ARGUMENT

A. Decertification Is Appropriate Here.

Plaintiffs bear the burden to establish with concrete evidence that the class is similarly situated and that collective treatment is warranted.¹⁷ Stage II decertification imposes a **far heavier burden** on Plaintiffs than conditional certification.¹⁸ "Final certification is rarely granted."¹⁹ Further, "the more material distinctions revealed by the evidence, the more likely the district court is to decertify the collective action." *Anderson*, 488 F.3d at 953. The specific factors considered at the second stage

¹⁴ See, e.g., Ex. 41, Beltran Depo. at 31:11-22, 32:16-33:2 (15 stores); Ex. 51, Joseph Depo. at 22:24-24:21, 83:6-8 (12 stores); Ex. 56, Minkosky Depo. at 106:13-14 (13 stores).

¹⁵ See *infra* at Section III.C.1.j.

¹⁶ See, e.g., Franklin Depo. at 162:6-164:4.

¹⁷ "[T]he similarities necessary to maintain a collective action under § 216(b) must extend beyond the mere facts of job duties and pay provisions' and encompass the defenses to some extent." Otherwise, "it is doubtful that §216(b) would further the interests of judicial economy, and it would undoubtedly present a ready opportunity for abuse." *Anderson v. Cagle's, Inc.*, 488 F.3d 945, 953 (11th Cir. 2007) (internal citations omitted). "[T]he district court must consider whether the defenses that apply to the opt-in plaintiffs' claims are similar to one another or whether they vary significantly." *Morgan v. Family Dollar Stores, Inc.*, 551 F.3d 1233, 1262 (11th Cir. 2008).

¹⁸ See *Anderson*, 488 F.3d at 953; *Morgan*, 551 F.3d at 1262.

¹⁹ *Gallender v. Empire Fire & Marine Ins. Co.*, 2007 WL 325792, at *2 (S.D. Miss. Jan. 31, 2007).

include: "(1) disparate factual and employment settings of individual plaintiffs; (2) the various defenses available to defendant that appear to be individual to each plaintiff; and (3) fairness and procedural considerations." *Id.*

Here, material distinctions abound. "[N]o single decision, policy, or plan" AutoZone has implemented would require or cause an SM to perform non-managerial tasks as their primary duty. The specific factual analysis *Anderson* requires reveals that Plaintiffs' job duties and responsibilities varied with respect to all legally relevant exemption criteria, and the factors described in *Anderson* each favor decertification. For all the foregoing reasons, this case must be decertified.

B. Plaintiffs Do Not Meet Their Burden For Final Certification.

Plaintiffs relied on three alleged broad and general similarities to meet the conditional certification "lenient standard": (1) the SM position is classified as exempt; (2) AutoZone maintains a job description for SMs; and (3) AutoZone engages in company-wide communications and policies. *See* Doc. 41, at 6-11. These do not meet Plaintiffs' "heavier burden" to establish the "single decision, policy, or plan" or provide the requisite similarity to support final certification.

1. Reliance on the SM Exempt Classification is Insufficient.

The law is clear that reliance on a blanket exemption is insufficient to maintain a collective action.²⁰ As set forth below, while AutoZone applied the executive and

²⁰ *Morgan*, 551 F.3d at 164 n.46 ("it is necessary to review the actual job duties of those in that job category to determine whether they are similarly situated and whether the exemption defense

administrative exemption to all Plaintiffs, "the defense is individuated in this case as Plaintiffs' job duties and employment experiences vary dramatically." *Knott*, 897 F. Supp. 2d at 1240.

2. Reliance on the SM Job Description is Insufficient.

Plaintiffs' reliance on a common job description is misplaced. Nothing in the record suggests that AutoZone expects, let alone directs, Plaintiffs to perform non-managerial tasks as their primary duty. If AutoZone's SM job description is relevant at all, it demonstrates the SMs are properly classified.²¹ Indeed, Plaintiffs effectively disavow the job description; they claim they **do not** perform the tasks it requires and deny it reflects their actual job duties and responsibilities. Thus, Plaintiffs cannot rely on the job description as evidence that all Plaintiffs are similarly situated.²²

can be collectively litigated."); *Knott v. Dollar Tree Stores, Inc.*, 897 F. Supp. 2d 1230, 1239-40 (N.D. Ala. 2012) (explaining how mere classification of a group does not automatically qualify plaintiffs as similarly situated); *Green v. Harbor Freight Tools USA, Inc.*, 888 F. Supp. 2d 1088, 1099 (D. Kan. 2012) (same); *Aquilino v. Home Depot, U.S.A., Inc.*, 2011 WL 564039, at *7 (D. N.J. Feb. 15, 2011) (explaining that the decision to classify manager position as exempt is not sufficient to establish that those employees are similarly situated).

²¹ Compare Ex. 1, Allen Dec. ¶14 & Exh. 1 *with* 29 U.S.C. § 541.102.

²² See *Lindsey v. Tire Discounters, Inc.*, 2017 WL 5972104, at *7 (S.D. Ohio Dec. 1, 2017) (decertifying action and noting that **plaintiffs could not rely on a uniform job description** as evidence of a single FLSA-violating policy applicable to all store managers "**because their claims rest on the irrelevance of that policy to SMs' actual employment**") (emphasis added); *Green*, 888 F. Supp. 2d at 1099 (decertifying action and rejecting argument that a common job description is evidence that a collective action is appropriate); *Smith v. Heartland Auto. Svcs., Inc.*, 404 F. Supp. 2d 1144, 1151 (D. Minn. 2005) (decertifying action and explaining that plaintiffs cannot rely on a common job description in arguing they are similarly situated **where plaintiffs claim they perform mainly non-exempt tasks rather than the management duties set out in the job description**).

3. Reliance on Company-Wide Policies is Insufficient.

That AutoZone has a "strong culture" does not meet Plaintiffs' burden to establish that Plaintiffs are similarly situated with respect to **actual duties performed**.²³ Plaintiffs' own testimony clearly shows that SM duties significantly vary from SM-to-SM. More importantly, Plaintiffs cannot prove that any alleged AutoZone policy, practice, or procedure causes SMs nationwide to perform non-managerial tasks as their **primary duty**.²⁴ Even assuming Plaintiffs could establish that SMs performed non-managerial tasks as a result of a common policy, practice, procedure, or corporate structure, the fact that Plaintiffs "may have spent a majority of their time performing non-managerial tasks does not establish sufficient similarities to warrant class certification." *See Aquilino*, 2011 WL 564039, at *8. Here, Plaintiffs concede they were "in charge" of their store and had management as their primary duty, even though they allege they spent the majority of their time on non-managerial work. *See Smith*, 404 F. Supp. 2d at 1152.

4. This Case is Not like *Morgan*.

First, *Morgan* does not mandate final certification in this case merely because the Plaintiffs share a common job description, are classified as exempt under the

²³ *See* Ex. 38, Robicheaux Expert Report, p. 19 ("It is good management practice to have policies and procedures written clearly and in sufficient detail to promote consistency across several thousands of stores spread across the U.S. ").

²⁴ *See Stevens v. HMSHost Corp.*, 2014 WL 4261410, at *5 (E.D.N.Y. Aug. 27, 2014); *see also Lindsey*, 2017 WL 5972104, at *7.

executive exemption, and are subject to corporate policies and procedures. Rather, *Morgan* simply confirms that this Court has discretion to make a decision based on its own factual findings and analysis.²⁵ And here, unlike *Morgan*, there is **extensive** testimony that Plaintiffs' job duties are different from store-to-store, district-to-district, and region-to-region. Additionally, unlike in *Morgan*, Plaintiffs' **own testimony** makes clear they performed management functions and maintained leadership over their stores while assisting AutoZoners under their supervision with non-managerial work.²⁶

The *Knott* case involving Dollar Tree store managers is instructive. The *Knott* court decertified the class because *the plaintiffs differed* in the type and amount of work they performed, such as recommending pay raises, disciplining, evaluating, training, directing the work of subordinates, processing reports, and providing for the safety and security of the employees or store, as well as regarding the weight their recommendations for hiring and firing were given.²⁷ The court held that "[t]o make a ruling based on the representative testimony of some Plaintiffs—specifically those with less authority and autonomy to run their store—would be unfair to Dollar

²⁵ *Morgan*, 551 F.3d at 1261.

²⁶ *Compare id.* at 1272 (*Morgan* plaintiffs testified that they did not perform managerial tasks concurrently with other tasks) *with* Section III.C.1., *infra*.

²⁷ *Knott*, 897 F. Supp. 2d at 1237-40.

Tree."²⁸ Like *Knott*, there are material distinctions in the job duties the Plaintiffs performed, which make a collective action impossible.

C. Each Anderson Factor Demands Decertification.

All three *Anderson* factors dictate decertification here: (1) disparate settings; (2) applicable defenses; and (3) fairness and procedural considerations.

1. Plaintiffs' Disparate Settings Weigh Against Certification.

"[W]hether members of [a] collective action are similarly situated requires an individual, fact-specific analysis of each employee's job responsibilities under the relevant statutory exemption criteria."²⁹ Thus, the executive exemption criteria set forth in the Department of Labor's regulations must be considered. *See Knott*, 897 F. Supp. 2d at 1235. Plaintiffs have not proven that their employment experiences and job duties are similar with regard to three executive exemption factors³⁰ so a separate, individualized SM-by-SM examination of all three factors is necessary.³¹ Here, like in *Knott*, there are material differences in the duties Plaintiffs performed and time they spent performing management duties.

²⁸ *Id.* at 1240. Here, opt-in Plaintiffs do not agree with each other about their authority and autonomy.

²⁹ *See Aquilino*, 2011 WL 564039, at *7 (explaining what constitutes a "primary duty").

³⁰ Those factors are: (a) "primary duty," (b) "customarily and regularly directs the work of two or more other employees," and (c) "authority to hire or fire." 29 C.F.R. § 541.100(a).

³¹ *See Knott*, 897 F. Supp. 2d at 1235, 1237-38 ("If each Plaintiffs' claims were tried separately, the primary duty of some would no doubt be found to be management, while the primary duty of others would not.").

a. Authority For Work Schedules Varies.

Some Plaintiffs prepared the weekly schedule for their stores³² whereas others testified they either share that responsibility with, or delegate that task to, other Gray Shirts.³³ Some Plaintiffs relied on the computerized scheduling assistant to create employees' work schedules whereas others disregarded it and had authority to make changes.³⁴ Some SMs testified their DM never made a change to their schedule.³⁵

b. Training Methods Differ.

Some Plaintiffs provided individualized coaching³⁶ and specialized training to subordinates,³⁷ whereas some Plaintiffs said certain training was only corporate or provided at the DM's direction.³⁸ Some Plaintiffs delegated training to other Gray Shirts.³⁹ Plaintiff **Davis** said he had *no role* in training his store employees.⁴⁰

³² See, e.g., Ex. 48, Harris Depo. 20:14-22; Ex. 50, James Depo. 58:14-17.

³³ See, e.g., Ex. 42, Bryant Depo. 54:17-57:1, 119:17-122:16; Ex. 43, Cottrell Depo. at 29:4-5; Ex. 66, Wood Depo. 51:10-19; see also Ex. 4, Ex. 20, Mohamed Dec. ¶19.

³⁴ **Compare** Ex. 44, Davis Depo. at 125:4-17 **with** Anderson Depo. at 49:5-17; Ex. 46, Franklin Depo. at 148:14-19; Ex. 63, Santiago Depo. at 52:1-10.

³⁵ See, e.g., Ex. 41, Beltran Depo. at 34:17-37:15.

³⁶ See, e.g., Ex. 4, Bailey Dec. ¶16; Ex. 46, Franklin Depo. 98:17-21; Ex. 50, James Depo. 71:1-16; Ex. 53, LaPlante Depo. at 39:8-10; Ex. 56, Minkosky Depo. 39:2-6.

³⁷ See, e.g., Ex. 50, James Depo. 86:3-14; Ex. 53, LaPlante Depo. at 108:3-9; see also Ex. 3, Bagley Dec. ¶12; Ex. 20, Mohamed Dec. ¶18; Ex. 28, Stringer Dec. ¶¶9, 17.

³⁸ Ex. 42, Bryant Depo. 117:1-5; Ex. 47, Gray Depo. 42:2-12 (set by DM).

³⁹ See, e.g., Ex. 61, Rosales Depo. 28:5-29:7 (shared responsibility with other managers).

⁴⁰ Ex. 44, Davis Depo. 115:1-19.

c. Responsibilities For Evaluations Diverge.

Some Plaintiffs had their performance evaluations rubber stamped; **Davis's** DM never substantially changed the performance evaluations he prepared.⁴¹ **Santiago's** DM only changed a performance review on two occasions, one of which was due to a system error.⁴² **Anderson's** DM, though, changed his performance rating and/or told him how to rate employees.⁴³ **Wood's** DM only changed performance appraisals to meet pay raise limitations.⁴⁴ Still other Plaintiffs testified they have the authority and discretion to review subordinate employees more frequently than once a year based on their personal observation.⁴⁵

d. Authority To Recommend Promotions, Pay Rates, and Raises Differs.

Most Plaintiffs testified they make recommendations for promotion.⁴⁶ However, Plaintiffs **Elateek** and **Rogers** testified they rarely recommended employees for promotion.⁴⁷ Plaintiff **Cottrell** testified he never made a promotion

⁴¹ Ex. 44, Davis Depo. 66:21-67:8.

⁴² Ex. 63, Santiago Depo. 152:22-153:11.

⁴³ Ex. 40, Anderson Depo. 104:12-21.

⁴⁴ Ex. 66, Wood Depo. 98:6-99:8.

⁴⁵ Ex. 47, Gray Depo. 134:25-135:8; Ex. 65, Urban Depo. 108:5-11.

⁴⁶ See, e.g., Ex. 41, Beltran Depo. 30:12-31:6; Ex. 47, Gray Depo. 65:19-68:9; Ex. 52, Lakes Depo. 13:14-23; Ex. 51, Joseph Depo. 46:1-24; Ex. 61, Rosales Depo. 41:15-17.

⁴⁷ Ex. 45, Elateek Depo. 79:10-15; Ex. 60, Rogers Depo. 37:23-38:24.

recommendation.⁴⁸ For those who do recommend, the success varies. **Lakes's** recommendations regarding promotion are always approved.⁴⁹ **Wood's** recommendations are considered and approved "most of the time."⁵⁰ **Gray's** recommendations are approved approximately 50% of the time.⁵¹ On the rare occasion **Elateek** recommended employees for promotion, his recommendation was not followed.⁵² Plaintiffs also testified about their authority and discretion to set pay rates or award employee bonuses or raises, and they again differed.⁵³

e. Disciplining Authority Differs.

Some Plaintiffs are fully responsible for disciplining employees in their stores and address performance issues at their discretion.⁵⁴ Testimony regarding their power to discipline varies. **Harris** can issue discipline without DM approval depending on the infraction's severity.⁵⁵ **Franklin** can submit a memo to file without

⁴⁸ Ex. 43, Cottrell Depo. 58:4-5.

⁴⁹ Ex. 52, Lakes Depo. 13:14-23.

⁵⁰ Ex. 66, Wood Depo. 37:17-38:18, 109:3-17.

⁵¹ Ex. 47, Gray Depo. 67:24-68:9.

⁵² Ex. 45, Elateek Depo. 79:10-80:6.

⁵³ *Compare* Ex. 44, Davis Depo. at 69:2-9; *with* Ex. 43, Cottrell Depo. at 53:5-7. Plaintiffs had different experiences setting the starting pay for new hires. *See, e.g.*, Ex. 43, Cottrell Depo. 53:5-7; Ex. 45, Elateek Depo. 81:11-82; Ex. 13, Greene Dec. ¶14.

⁵⁴ Ex. 53, LaPlante Depo. 101:6-10, 112:24-113:2; Ex. 52, Lakes Depo. 11:23-12:2.

⁵⁵ Ex. 48, Harris Depo. 15:4-16:2.

DM approval as an initial disciplinary step.⁵⁶ Others get assistance from their DM or HR.⁵⁷ When discipline recommendations were made, their DM considered their recommendations and generally approved the discipline.⁵⁸ **Saldivar** and **Urban** DMs always approved their disciplinary recommendations.⁵⁹ **Santiago** recalls only once his DM did not approve his recommended discipline.⁶⁰ Others claim they have no control over discipline.⁶¹

f. Customer Service Responsibilities Diverge.

Plaintiffs disagreed about their management responsibility to ensure subordinate AutoZoners provide "WOW! Customer Service."⁶² Customer complaint testimony also varies; some resolved customer complaints in their store,⁶³ while

⁵⁶ Ex. 46, Franklin Depo. 117:10-18, 119:8-14.

⁵⁷ *See, e.g.*, Ex. 41, Beltran Depo. 59:7-12; Ex. 51, Joseph Depo. 49:7-20; Ex. 55, Manginelli Depo. 61:22-62:6; Ex. 59, Noyola Depo. at 78:7-79:20, 80:9-19; Ex. 65, Urban Depo. at 86:10-14.

⁵⁸ Ex. 47, Gray Depo. 100:5-14; Ex. 50, James Depo. 124:20-125:13; Ex. 56, Minkosky Depo. 77:11-14, 79:7-10; Ex. 62, Saldivar Depo. 68:7-69:7; Ex. 63, Santiago Depo. 197:17-22; Ex. 66, Wood Depo. 63:15-64:16.

⁵⁹ Ex. 62, Saldivar Depo. 68:7-69:7; Ex. 65, Urban Depo. 87:18-88:4.

⁶⁰ Ex. 63, Santiago Depo. 197:17-22.

⁶¹ Ex. 44, Davis Depo. 101:8-13; Ex. 45, Elateek Depo. 57:21-58:3; Ex. 51, Joseph Depo. 67:22-25; Ex. 54, Loveday Depo. 71:4-7; Ex. 57, Mobley Depo. 156:18-23; Ex. 58, Moore Depo. 45:14-46:9.

⁶² *Compare* Ex. 42, Bryant Depo. 126:11-128:7; Ex. 43, Cottrell Depo. 46:15-47:5; Ex. 45, Elateek Depo. 83:21-84:3, 112:7-18, 117:24-118:6; Ex. 48, Harris Depo. 21:14-22:2; Ex. 50, James Depo. 68:9-15, 69:6-9; Ex. 55, Manginelli Depo. 64:21-23, 65:22-67:6; Ex. 57, Mobley Depo. 169:3-174:10; *with* Ex. 44, Davis Depo. 131:12-19; *see also* Ex. 38, Robicheaux Expert Report, p. 27.

⁶³ *See, e.g.*, Gray Depo. 98:23-25; Ex. 13, Greene Dec. ¶41; Ex. 48, Harris Depo. 22:15-18, 29:2-

others said they needed authority from the DM to resolve problems with certain customer accounts.⁶⁴ Still others claimed they never handled customer complaints and had no authority to offer price adjustments.⁶⁵

g. Loss Prevention Responsibilities Also Diverge.

Plaintiffs viewed and performed their role in controlling shrink differently.⁶⁶ Their tactics included monitoring employees and customers,⁶⁷ monitoring cash handling procedures,⁶⁸ training employees to avoid shrinkage,⁶⁹ checking paperwork for fraudulent returns,⁷⁰ and investigating missing items.⁷¹

h. Revenue and Expense Management Varies.

Plaintiffs claim different time allocations to process and use store financial,

11; Ex. 52, Lakes Depo. 15:22-16:2, 25:18-26:1; Ex. 55, Manginelli Depo. 67:7-69:2; Ex. 59, Noyola Depo. 73:16-74:3 (authority to resolve customer issues on his own).

⁶⁴ Ex. 45, Elateek Depo. 101:8-16; Ex. 51, Joseph Depo. 64:13-65:2.

⁶⁵ Ex. 43, Cottrell Depo. 47:6-13.

⁶⁶ *Compare* Ex. 43, Cottrell Depo. 47:23-48:9; Ex. 45, Elateek Depo. 68:18-70:16; *with* Ex. 42, Bryant Depo. 130:9-132:19; Ex. 57, Mobley Depo. 53:16-58:9.

⁶⁷ *See, e.g.*, Ex. 46, Franklin Depo. at 106:10-16; Ex. 54, Loveday Depo. at 74:1-7; Ex. 57, Mobley Depo. at 54:7-14; Ex. 59, Noyola Depo. at 74:23-76:6.

⁶⁸ *See, e.g.*, Ex. 55, Manginelli Depo. at 71:14-72:8; Ex. 13, Greene Dec. ¶¶32-33.

⁶⁹ *See, e.g.*, Ex. 52, Lakes Depo. at 14:18-15:12; Ex. 54, Loveday Depo. at 72:6-12, 74:8-75:17; Ex. 55, Manginelli Depo. at 72:12-18; Ex. 57, Mobley Depo. at 171:23-172:22.

⁷⁰ Ex. 45, Elateek Depo. at 68:18-69:12; Ex. 35, Whitfield Dec. ¶16.

⁷¹ Ex. 45, Elateek Depo. at 88:22-91:8; Ex. 52, Lakes Depo. at 14:18-15:12.

revenue and expense targets reports.⁷² Plaintiffs also vary widely in their efforts to meet sales targets and control store expenses.⁷³ Further, Plaintiffs' experiences with store expenses⁷⁴ and maintenance⁷⁵ differ significantly.

i. Tasks Are Delegated Differently.

Plaintiffs' cumulative testimony proves they are responsible for ensuring store tasks are completed and can delegate job tasks at their discretion.⁷⁶ Plaintiffs disagree on what tasks they delegated, such as scheduling;⁷⁷ inventory matrix;⁷⁸

⁷² See, e.g., Ex. 46, Franklin Depo. 109:2-16; Ex. 50, James Depo. 67:23-68:12; Ex. 55, Manginelli Depo. 69:3-70:7; Ex. 58, Moore Depo. at 42:20-24; Ex. 61, Rosales Depo. at 34:3-6.

⁷³ **Compare** Ex. 44, Davis Depo. 60:21-62:19, 110:13-111:3; Ex. 54, Loveday Depo. 75:18-77:6; **with** Ex. 42, Bryant Depo. 124:11-125:4; Ex. 43, Cottrell Depo. 46:10-14; Ex. 58, Moore Depo. 43:19-44:2, 44:18-2.

⁷⁴ **Compare** Ex. 48, Harris Depo. 23:10-12 **with** Ex. 43, Cottrell Depo. at 45:20-23.

⁷⁵ **Compare** Ex. 50, James Depo. 85:22-86:1; Ex. 52, **with** Lakes Depo. 19:21-20:6; Ex. 60, Rogers Depo. 71:6-72:1 and Ex. 59, Noyola Depo. 90:4-13.

⁷⁶ **Compare** Ex. 51, Joseph Depo. 49:21-55:5, 88:22-25; Ex. 55, Manginelli Depo. 105:9-16; **with** Ex. 44, Davis Depo. 120:14-19.

⁷⁷ **Compare** Ex. 66, Wood Depo. 46:22-25, 47:15--17; **with** Ex. 65, Urban Depo. 67:3-69:16, 70:13-71:12.

⁷⁸ **Compare** Ex. 62, Saldivar Depo. 58:15-23; Ex. 59, Noyola Depo. at 70:18-22; **with** Ex. 52, Lakes Depo. 18:11-22.

planograms;⁷⁹ new hire training;⁸⁰ recruiting;⁸¹ and cleaning the store.⁸² The variance in tasks delegated depends on factors unique to each store like staffing level⁸³ and each AutoZoner's strengths, weaknesses, and experience level.⁸⁴ SMs still hold their AutoZoners accountable for completing their designated tasks.⁸⁵ **Indeed, almost every Plaintiff** differs in what job duties he or she delegated.

j. DM Involvement Varies.

The interaction between DM and SM varies based on store location,⁸⁶ store performance,⁸⁷ and SM experience.⁸⁸ Some testified DMs called multiple times per

⁷⁹ *Compare* Ex. 63, Santiago Depo. 82:4--15; *with* Ex. 44, Davis Depo. at 127:17-19.

⁸⁰ *Compare* Ex. 58, Moore Depo. at 75:20-76:4; *with* Ex. 46, Franklin Depo. at 96:13-98:21; Ex. 65, Urban Depo. at 74:22-25.

⁸¹ *Compare* Ex. 40, Anderson at 52:7-11; *with* Ex. 46, Franklin Depo. at 105:3-9.

⁸² *Compare* Ex. 42, Bryant Depo. at 142:4-16; *with* Ex. 43, Cottrell Depo. at 54:11-13; Ex. 45, Elateek Depo. at 93:20-95:3.

⁸³ Ex. 42, Bryant Depo. at 154:10-155:12.

⁸⁴ *See, e.g.*, Ex. 40, Anderson Depo. at 45:15-18; Ex. 59, Noyola Depo. at 59:23-60:3; Ex. 66, Wood Depo. at 41:19-42:23.

⁸⁵ *Compare* Ex. 42, Bryant Depo. at 50:22-52:8, 142:17-143:14; Ex. 45, Elateek Depo. at 119:19-120:1; Ex. 57, Mobley Depo. at 128:7-129:7; *with* Ex. 44, Davis Depo. at 117:7-23.

⁸⁶ Ex. 42, Bryant Depo. at 152:3-14; Ex. 44, Davis Depo. at 86:1-17; Ex. 35, Whitfield Dec. ¶21; *see also* Ex. 22, Shakerin Dec. ¶17; Ex. 29, Swinky Dec. ¶¶13-14.

⁸⁷ *See, e.g.*, Ex. 45, Elateek Depo. 46:4-48:17, 59:10-17; Ex. 46, Franklin Depo. 161:13-24; Ex. 55, Manginelli Depo. 91:20-92:12; Ex. 57, Mobley Depo. 85:15-86:22, 185:19-23; Ex. 61, Rosales Depo. 58:9-14.

⁸⁸ *See, e.g.*, Ex. 55, Manginelli Depo. 91:20-92:12; Ex. 58, Moore Depo. 60:23-61:18; *see also* Ex. 27, Stevens Dec. ¶14.h.; Ex. 29, Swinky Dec. ¶14.

day⁸⁹ while other DMs called once a week, or sporadically.⁹⁰ Some testified their DM visited the store daily or multiple times a week⁹¹ while others testified their DM would only visit quarterly, or randomly.⁹² DM involvement impacts Plaintiffs' job duties, and some were given "autonomy to adjust and run [their] business"⁹³ while others' SMs were "micromanaged."⁹⁴ Even within a single District, SM experiences with the same DM diverge.⁹⁵ Plaintiffs admit they cannot testify as to how their respective DMs interacted with other SMs in their District, let alone how other DMs interacted with Plaintiffs nationwide.⁹⁶ This reality defies common proof.

k. Concurrent Performance of Duties.

⁸⁹ Ex. 43, Cottrell Depo. 62:14-20; Ex. 44, Davis Depo. 102:18-103:2.

⁹⁰ Ex. 41, Beltran Depo. 32:16-20; Ex. 52, Lakes Depo. 21:5-22:5; Ex. 65, Urban Depo. 112:12-19.

⁹¹ Ex. 42, Bryant Depo. 149:9-13; Ex. 43, Cottrell Depo. 61:20-22; Ex. 45, Elateek Depo. 46:4-9.

⁹² *See, e.g.*, Ex. 41, Beltran Depo. 31:14-18; Ex. 52, Lakes Depo. 21:5-22:5; Ex. 58, Moore Depo. 58:16-19; Ex. 59, Noyola Depo. 93:15-19.

⁹³ *See, e.g.*, Ex. 25, Siragusa Dec. ¶15; Ex. 40, Anderson Depo. at 42:6-14.

⁹⁴ Franklin Depo 163:1-2; Gray Depo. 42:19-43:9.

⁹⁵ The differences in which a DM will treat SMs even in the same District are apparent when comparing the testimony of Plaintiffs Whitfield and Bryant, both supervised by DM Fred King. For example, Bryant testified he did not select persons for interview and played only a small role in the hiring process, while Whitfield testified to the opposite. *Compare* Ex. 42, Bryant Depo. at 133:8-18 *with* Ex. 35, Whitfield Dec. ¶15. Bryant testified his DM did not approve of any of the hiring recommendations that he made, while the DM approved the majority of recommendations made by Whitfield. *Compare* Ex. 42, Bryant Depo. at 137:1-14 *with* Ex. 35, Whitfield Dec ¶15.

⁹⁶ *See, e.g.* Ex. 42, Bryant Depo. at 99:2-11, 109:1-110:13, 150:15-151:16; Ex. 55, Manginelli Depo. at 86:24-87:9, 91:16-19; Ex. 61, Rosales Depo. at 58:6-8; Ex. 4, Bailey Dec. ¶2; Ex. 35, Whitfield Dec. ¶21.

Unlike in *Morgan*, **numerous** Plaintiffs confirm they perform management functions *while concurrently performing any non-management tasks*. Almost all testified they continued to manage and remained responsible for their store **at all times**.⁹⁷

I. Authority to Direct Work.

Plaintiffs' testimony differs in their authority to direct other AutoZoners working in their stores. Most concede all employees in the store report to the SM.⁹⁸ Most also admit they direct the work in the store and delegate day-to-day tasks to employees in their store as the SM.⁹⁹ Some, however, claim their DM supervises the personnel in their store.¹⁰⁰ Others testified they do not delegate tasks to employees at all.¹⁰¹ Plaintiffs cannot be similarly situated based on their own conflicting testimony.

⁹⁷ See, e.g., Ex. 40, Anderson Depo. at 82:20-83:7; Ex. 41, Beltran Depo. at 176:8-18; Ex. 13, Greene Dec. ¶ 40; Ex. 48, Harris Depo. at 24:20-25:1; Ex. 49, Hulett Depo. at 147:14-19; Ex. 50, James Depo. at 97:24-98:11; Ex. 51, Joseph Depo. at 103:3-6, 137:14-20; Ex. 52, Lakes Depo. at 20:23-21:4; Ex. 53, LaPlante Depo. at 59:1-9; Ex. 56, Minkosky Depo. at 110:13-21; Ex. 59, Noyola Depo. at 102:1-25; Ex. 62, Saldivar Depo. at 85:21-23; Ex. 65, Urban Depo. at 115:19-116:22; Ex. 35, Whitfield Dec. ¶¶ 19-20.

⁹⁸ See, e.g., Ex. 51, Joseph Depo. 28:1-17, 106:6-12, 138:6-11; Ex. 56, Minkosky Depo. 24:18-30:25, 31:18-20, 48:18-49:1, 55:21-56:6, 88:3-6, 99:21-100:4, 103:7-11.

⁹⁹ See, e.g., Ex. 40, Anderson Depo. 109:11-19; Ex. 45, Elateek Depo. at 117:16-23; Ex. 51, Joseph Depo. 35:7-9, 49:21-55:5, 83:15-23, 88:22-25.

¹⁰⁰ See Doc. 39-8, Bryant Dec. ¶¶ 14-15; Doc. 39-7, Mobley Dec. ¶¶ 14-15.

¹⁰¹ See Ex. 44, Davis Depo. 127:17-19; Ex. 47, Gray Depo. 34:15-23, 75:5-10.

m. The "Authority to Hire or Fire" Analysis.

Plaintiffs' testimony reveals their authority to hire or fire AutoZoners differed. Those differences include how often they made recommendations to hire or fire and how often their recommendations were approved. Plaintiffs' testimony about their involvement in the hiring process varied greatly, ranging from almost complete autonomy to a very limited role. Some monitored the staffing level and initiated the hiring process.¹⁰² Some testified they were responsible for recruiting applicants, even though they utilized different recruiting tools.¹⁰³ Others testified they did not recruit and had no involvement in recruiting.¹⁰⁴

Plaintiffs' role in screening applicants and determining whether an applicant should be interviewed also varied. Most testified they were responsible for screening applicants and determining whether an applicant should be interviewed,¹⁰⁵ but some testified they had limited or no involvement in the process.¹⁰⁶

¹⁰² See, e.g., Ex. 43, Cottrell Depo. at 50:12-23; Ex. 55, Manginelli Depo. at 73:3-23, 73:24-75:10, 76:16-77:2; Ex. 4, Bailey Dec. ¶14 ("I make the decision when an employee is needed.").

¹⁰³ See, e.g., Ex. 46, Franklin Depo. at 105:3-9; Ex. 55, Manginelli Depo. at 73:24-74:24; Ex. 57, Mobley Depo. at 114:7-115:5; Ex. 61, Rosales Depo. at 26:14-18; Ex. 66, Wood Depo. at 68:5-18; Ex. 13, Greene Dec. ¶15; Ex. 35, Whitfield Dec. ¶15.

¹⁰⁴ Ex. 43, Cottrell Depo. at 50:6-8; Ex. 44, Davis Depo. at 125:18-126:1.

¹⁰⁵ See, e.g., Ex. 44, Davis Depo. at 50:4-22, 51:22-52:6; Ex. 46, Franklin Depo. at 72:6-73:1; Ex. Harris Depo. at 12:23-13:18; Ex. 52, Lakes Depo. at 10:3-9; Ex. 55, Manginelli Depo. at 76:16-77:15; Ex. 56, Minkosky Depo. at 89:5-10, 90:16-19, 92:1-5, 93:4-7; Ex. 58, Moore Depo. at 36:2-24; Rosales Depo. at 27:5-12.

¹⁰⁶ Ex. 42, Bryant Depo. at 135:2-136:6, 139:19-140:9; Ex. 43, Cottrell Depo. at 52:1-3.

In the interview process, some had complete autonomy to select certain candidates and conduct interviews without DM involvement,¹⁰⁷ and others had DMs who selected candidates conducted second interviews of all candidates.¹⁰⁸

Finally, the deference DMs give to each Plaintiff's recommendations varies greatly. Some Plaintiffs' recommendations are always (or almost always) followed by their DM;¹⁰⁹ other Plaintiffs' recommendations are rarely followed (or never followed).¹¹⁰

2. The Applicable Defenses Weigh Against Certification.

AutoZone has no alternative but to provide deposition testimony, records, and witnesses demonstrating that each Plaintiff had "widely dissimilar" levels of managerial authority and duties.¹¹¹ "That exercise is tantamount to conducting multiple individual trials on the merits and is the antithesis of a collective action."¹¹²

¹⁰⁷ Ex. 41, Beltran Depo. at 49:11-51:22; Ex. 50, James Depo. at 73:9-74:3, 78:8-13; Ex. 51, Joseph Depo. at 122:3-8; Ex. 55, Manginelli Depo. at 79:14-24; *see also* Ex. 19, Lusher Dec. ¶18; Ex. 17, Hubble Dec. ¶12.

¹⁰⁸ Ex. 44, Davis Depo. at 53:14-54:1; Franklin Depo. at 79:5-9 (DM conducted second interview for Gray and Red Shirts); Ex., 58, Moore Depo. at 37:1-18; Ex. 59, Noyola Depo. at 85:17-25.

¹⁰⁹ *See, e.g.*, Ex. 46, Franklin Depo. at 84:2-9; Ex. 52, Lakes Depo. at 11:23-13:2; Ex. 55, Manginelli Depo. at 80:7-14; Ex. 56, Minkosky Depo. at 94:21-97:2; Ex. 60, Rogers Depo. at 162:1-3; Ex. 63, Santiago Depo. at 168:11-169:4; Ex. 66, Wood Depo. at 70:22-71:12; *see also* Ex. 15, Hawkins Dec. ¶6.

¹¹⁰ Ex. 42, Bryant Depo. at 137:1-14; Ex. 43, Cottrell Depo. at 51:19-21, 58:22-59:21; Ex. 62, Saldivar Depo. at 74:19-75:3.

¹¹¹ *See, e.g., Stevens*, 2014 WL 4261410, at *7 (E.D.N.Y. Aug. 27, 2014).

¹¹² *Johnson v. Big Lots Stores, Inc.*, 561 F. Supp. 2d 567, 586 (E.D. La. 2008).

Plaintiffs' testimony demonstrates the same analysis is required here.¹¹³

a. Claims Require Highly Individualized Defenses.

Plaintiffs' claims necessitate individualized evidence. Collective treatment would unfairly deprive AutoZone of the opportunity to assert its defenses and present its evidence in response to the widely varying class claims. Specific defenses AutoZone will offer requiring individualized testimony include:

i. Plaintiffs' performance of daily tasks.

The record evidence establishes that representative testimony regarding daily tasks is not possible. Rather, each Plaintiff will be required to present testimony regarding his or her own daily experiences. There are material distinctions in how SMs perform their job duties and the emphasis each places on various management functions. Thus, whether Plaintiffs are properly classified under the executive exemption is an individual inquiry.¹¹⁴

ii. Plaintiffs' credibility.

AutoZone will present individualized evidence regarding Plaintiffs' representations that management was their primary duty in contexts other than this litigation. For example, some Plaintiffs have prepared and posted on public websites

¹¹³ See *Green*, 888 F. Supp. 2d at 1104; *Lindsey*, 2017 WL 5972104, at *12.

¹¹⁴ *Bradford v. CVS Pharmacy, Inc.*, 308 F.R.D. 696, 702 (N.D. Ga. 2015); *Knott*, 897 F. Supp. 2d at 1241 (N.D. Ala. 2012).

resumes in which they "tout[] their management responsibilities" at AutoZone.¹¹⁵ These representations concerning their primary duty as an AutoZone SM are relevant to their claims and AutoZone's defenses and their own credibility.¹¹⁶ AutoZone is entitled to question individual Plaintiffs regarding this conflicting evidence, which makes collective treatment unmanageable.¹¹⁷

The documents Plaintiffs prepared for subordinate AutoZoners, including discipline and evaluations are similarly relevant. These documents show Plaintiffs' managerial responsibilities, and AutoZone is entitled to explore any contradictory deposition testimony or discovery responses.¹¹⁸ Finally, if a Plaintiff was disciplined or terminated for not meeting AutoZone's SM expectations, those individualized

¹¹⁵ See *Green*, 888 F. Supp. 2d at 1103. Despite AutoZone's discovery requests, Plaintiffs did not provide any resumes listing their experience as an AutoZone SM. A search performed via monster.com, indeed.com, and ziprecruiter.com yielded resumes posted on these sites that demonstrate many Plaintiffs represented to potential employers that management was their primary duty as an AutoZone SM. Ex. 24, Sharitt Dec. ¶¶3-5 & Atts. A-C.

¹¹⁶ *Compare* Ex. 44, Davis Depo. at 106:5-107:2 (testified that he does not do any coaching of his employees in his store) *with* Ex. 24, Sharitt Dec. ¶5 & Att. B ("Maintains staff job by coaching, counseling, and disciplining employees; planning, monitoring, and appraising job results."); *Compare* Ex. 50, James Depo. at 66:23-67:5 (testified that she could not control expenses on the P&L as an AutoZone SM) *with* Ex. 24, Sharitt Dec. ¶5 & Ex. C ("Dramatically reduced company expenses from .80% to .45% in 1 year, by improving upon customer service skills in-house").

¹¹⁷ See, *e.g.*, *Smith*, 404 F. Supp. 2d at 1154; *Aquilino*, 2011 WL 564039, at *9.

¹¹⁸ Ex. 45, Elateek Depo. at 106:18-108:4 & DX2; *see also* Ex. 38, Robicheaux Expert Report, pp. 21-22 ("Eleven different employees who served as PSM, CSM, part-time sales and part-time driver were "disciplined" by Elateek for a variety of violations of AutoZone policies for which he as SM was responsible....These evidence a rather high level of engagement of Elateek in front-line store management behaviors.").

facts are relevant to whether the executive exemption applies.¹¹⁹

iii. Plaintiffs' damages claims.

Plaintiffs' damage claims are also dissimilar. Plaintiffs claim hours worked that range from 50 to 65 hours or more in an average week.¹²⁰ Without an individualized inquiry into each Plaintiff's hours worked at trial, the Court will be unable to award damages in a manner that does not infringe Plaintiffs' and AutoZone's due process rights. This is an independent reason to decertify this action.¹²¹

iv. Plaintiffs' timeliness.

While the named Plaintiffs' claims were brought within the FLSA's limitations period, over 500 class members' claims were not.¹²² The only way to preserve these claims is through equitable tolling, which requires independent

¹¹⁹ Ex. 12, Glasscock Dec. ¶30.

¹²⁰ See, e.g., Ex. 41, Beltran Depo. at 33:13-20; Ex. 44, Davis Depo. at 74:12-14; Ex. 45, Elateek Depo. at 18:17-19:1; Ex. 47, Gray Depo. at 140:17-19; Ex. 49, Hulett Depo. at 30:3-4; Ex. 66, Wood Depo. at 87:7-12.

¹²¹ See Ex. 67, Order on Mot. to Decertify, *In Re: Dollar Gen. Corp.* FLSA Litig., No. 7:02-CV-0673-UWC (N.D. Ala. Aug. 8, 2006), Doc. No. 707 (Clemon, J.) (granting motion to decertify collective action of retail store managers where the "named Plaintiffs' [sic] cannot establish that they and the opt-in Plaintiffs are similarly situated with respect to damages.").

¹²² Defendants plan to move for summary judgment for those Plaintiffs with untimely claims.

consideration of specific facts and circumstances,¹²³ rendering decertification appropriate.¹²⁴

AutoZone will submit individualized evidence that some SMs did not diligently exercise their rights. For example, litigation over AutoZone's SM classification has lasted over ten years, and each Plaintiff's knowledge of the litigation, and why he or she did not timely file suit, will matter for whether equitable tolling applies to their untimely claims.¹²⁵

b. Plaintiff Examples Necessitate Decertification.

Highlighting testimony from just two Plaintiffs demonstrates that individualized evidence is required to defend each Plaintiff's claims:

Kevin Wood – Plaintiff Kevin Wood (“Wood”) testified that his duties as a SM require him to supervise and direct the work of hourly employees in his store on a day-to-day basis.¹²⁶ Wood testified that his DM only visited his store approximately **4-6 times per year**.¹²⁷ Wood specifically admitted that all employees working in his store report to

¹²³ *Atkinson v. TeleTech Holdings, Inc.*, 2015 WL 853234, at *9 (S.D. Ohio Feb. 26, 2015) (“[T]he doctrine of equitable tolling is an individualized inquiry, inappropriate for group consideration in the context of a FLSA collective action.”).

¹²⁴ *Sandoz v. Cingular Wireless, L.L.C.*, 700 F. App'x 317 (5th Cir. 2017) (affirming decertification on the basis that the Opt-In Plaintiffs' claims were time-barred).

¹²⁵ *See generally Taylor*, Docs. 101-126; *see also Lucas v. Molten*, 2016 WL 2754450, at *6 (N.D. Ala. May 12, 2016); *Whitefield v. Career Training Institute*, 2016 WL 8943171, at *2 (M.D. Fla. June 1, 2016) (“the Eleventh Circuit has been unwilling to allow equitable tolling in instances where putative plaintiffs are generally aware of their rights but do not act on those rights within the statutory period.”).

¹²⁶ Ex. 66, Wood Depo. at 16:4-18, 32:18-23.

¹²⁷ *Id.* at 82:17-83:16.

him and that he is responsible for managing his store's overall performance, operations, and employees **at all times**.¹²⁸ Wood further specifically testified that he performs numerous exempt management duties, including but not limited to, interviewing and recommending candidates for hire, and training employees and ensuring compliance with policies and procedures.¹²⁹ Finally, Wood admitted that his recommendations regarding hires, promotions, and pay raises are considered and almost always followed by his DM.¹³⁰

Dwight Bryant – Contrary to Wood, Plaintiff Dwight Bryant (“Bryant”) testified his DM visited his store **every single day** and called him multiple times per day.¹³¹ Bryant further testified that he did not attempt to motivate employees in his store and he played no role in managing expenses.¹³² Finally, Bryant testified his DM identified job candidates for his store, did all of the hiring, and never approved a hiring recommendation made by Bryant.¹³³

Not only are the allegations and testimony in the examples above completely irreconcilable, the evidence AutoZone uses to refute each claim is individualized.

c. A Federal Court Found An AutoZone SM Exempt.

In May 2016, Judge Michael Urbanski of the District Court for the Western District of Virginia held that an AutoZone SM was properly classified as an exempt

¹²⁸ *Id.* at 16:14-18, 40:3-7, 41:11-18, 65:24-66:1, 89:1-90:3, 110:14-20.

¹²⁹ *Id.* at 25:13-27:4, 36:11-38:18, 39:19-40:7, 41:19-42:23, 43:11-16, 45:4-11, 46:22-47:17, 54:2-10, 55:9-13, 63:5-66:1, 66:10-67:21, 68:5-18, 69:7-16, 71:13-73:20, 74:9-25, 76:25-77:3, 81:2-8, 82:3-16, 108:5-109:17, 109:18-112:6.

¹³⁰ *Id.* at 69:21-71:12.

¹³¹ Ex. 42, Bryant Depo. at 149:6-13.

¹³² *Id.* at 117:1-10, 124:15-125:4.

¹³³ *Id.* at 133:8-136:6, 137:5-14.

executive.¹³⁴ The judicial determination that an AutoZone SM subject to the exact same corporate policies, procedures, and expectations as the SMs in this case is exempt is in direct contrast with Plaintiffs' allegations in this collective action. For Plaintiffs to contend the *Smith* court's opinion does not foreclose final certification in this matter they must effectively disavow their stated position that AutoZone maintains a uniform corporate policy and practice to misclassify the SM job position. At a minimum, and giving Plaintiffs the most generous interpretation, Judge Urbanski's decision at least shows Plaintiffs' circumstances are dissimilar and individualized consideration of Plaintiffs' experiences is required. If they are the same, Judge Urbanski has already concluded their claims should be dismissed.

3. Procedural Considerations Weigh Against Certification.

A collective action's primary objective is to lower costs to the plaintiffs and to limit the controversy to one proceeding that efficiently resolves common issues that arise from the same alleged activity. *Morgan*, 551 F.3d at 1264. Neither purpose would be fulfilled in this case. First, because the evidence regarding Plaintiffs' duties and the individualized facts are so disparate, Plaintiffs cannot fairly rely on representative testimony. Thus, any efficiency gained from proceeding as a class will be erased in numerous mini-trials to determine liability, and then a second set

¹³⁴ See Mem. Opinion, *Smith v. AutoZone, Inc.*, No. 7:15-CV-00183, 2016 WL 4718184 (W.D. Va. May 13, 2016) (granting summary judgment to AutoZone; plaintiff SM was exempt despite significant oversight from his District Manager).

of mini-trials to determine damages.¹³⁵ Finally, since most Plaintiffs and key defense witnesses work and reside in other states, resolution will require the parties to engage in extensive travel and expend substantial resources. The circumstances plainly support decertification.

a. Each Plaintiff's Claims Will Involve a Mini-Trial.

Since there is no commonality among Plaintiffs' claims or AutoZone's evidence it would offer in response to the claims, individualized mini-trials will be required to resolve each Plaintiff's claims. Thus, "the procedural advantages of a collective action evaporate" and decertification must be granted.¹³⁶

b. Representative Testimony Is Procedurally Unfair.

AutoZone will be unduly prejudiced if representative testimony were permitted. As in *Johnson*, "were the Court to rule in plaintiffs' favor, it would have to do so on the basis of proof that is not representative of the whole class, and the verdict would result in liability on the defendant in a magnitude that is not warranted

¹³⁵ See *Green*, 888 F. Supp. 2d at 1104; *Gatewood v. Koch Foods of Mississippi*, No. 3:07CV82-KS-MTP, 2009 WL 8642001, at *20 (S.D. Miss. Oct. 20, 2009); *Lindsey*, 2017 WL 5972104, at *13.

¹³⁶ *Johnson*, 561 F. Supp. 2d at 588; see also *Aquilino*, 2011 WL 564039, at *10 (because of individualized exemption inquiry for managers, the court had "serious concerns as to whether a collective action would be most efficient" and whether the court could "coherently manage" the collective action without prejudice to the parties.). "[T]here is simply a realistic limit on what a jury may reasonably be expected to absorb, retain, and process." *Gatewood*, 2009 WL 8642001, at *20; see also *Bayles v. American Med. Response of Colo., Inc.*, 950 F. Supp. 2d 994, 1067 (D. Colo. 1996).

in reality." *Id.* One small group cannot speak for the whole, particularly when there is substantial evidence that establishes SMs are properly classified as exempt.

Decertification is appropriate where, as here, the Court "cannot draw any reliable inferences about the job duties of plaintiffs as a class." *Johnson*, 561 F. Supp. 2d at 587. In such circumstances, "it would be an injustice to proceed to a verdict on the merits that results in a binding class wide ruling based on such disparate evidence." *Id.* Just as in *Knott*, "while the executive-exemption defense is common among all Plaintiffs, there is an abundance of evidence concerning their differences," and "[b]ecause it is an extensively fact-based inquiry, these differences directly affect an assessment of the executive-exemption for each individual Plaintiff."¹³⁷ Plaintiffs have not proposed a plan for representative testimony; yet, representative testimony of any kind would prejudice AutoZone's defense of the claims.¹³⁸

It is impossible to adjudicate all Plaintiffs' claims based on the testimony from a small group, particularly where the testimony even among the small group is so different. Whether any other 1,000+ Plaintiffs not subject to discovery would testify

¹³⁷ *Knott*, 897 F. Supp. 2d at 1241 (holding "it would be fundamentally unfair to [defendant] if the class were to remain certified").

¹³⁸ *Cf. Sec'y of Labor v. DeSisto*, 929 F.2d 789, 794 (1st Cir. 1991) (representative testimony must give rise to just and reasonable inferences in order for a court to rely on it in rendering a judgment on the merits). The use of representative testimony would constitute an unconstitutional deprivation of property in violation of AutoZone's due process rights, effectively preventing AutoZone from defending the claims in a meaningful way by denying their ability to offer individual evidence in response to Plaintiffs' various claims. *See Lusardi v. Xerox Corp.*, 118 F.R.D. 351, 370-73 (D. N.J. 1987).

similarly, or provide completely different testimony--and whether AutoZone would have a defense to each claim based on that testimony--can only be determined if evidence is obtained from each Plaintiff and AutoZone is afforded the opportunity to present defenses specific to them.¹³⁹

c. Rule 23 Precedent Compels Decertification.

Rule 23 precedent demonstrates that collective treatment is inappropriate when resolution requires individualized inquiries. In *Wal-Mart Stores, Inc. v. Dukes*, the Supreme Court rejected the district court's plan to adjudicate the claims of a "sample set of the class members" and then extrapolate liability to the larger class on a percentage basis ("Trial by Formula"). 131 S.Ct. 2541, 2551-52 (2011). *Dukes* held, "a class cannot be certified on the premise that [the defendant] will not be entitled to litigate its statutory defenses to individual claims." *Id.* at 2561. *Dukes'* trial by formula discussion in the Rule 23 context illustrates that where individualized damages questions so predominate over damages questions capable of classwide proof, certification is inappropriate and raises due process concerns.

IV. CONCLUSION

For all the foregoing reasons, decertification must be granted.

¹³⁹ See *Zivali v. AT&T Mobility*, 784 F. Supp. 2d 456, 459 (S.D.N.Y. 2011); *Seward v. Int'l Business Machine Corp.*, 2012 WL 860363, at *1 (S.D.N.Y. March 9, 2012); *Martin v. Citizens Financial Group*, 2013 WL 1234081, at *7 (E.D. Pa. March 27, 2013); *Knott*, 897 F. Supp. 2d at 1241; *Richter v. Dolgencorp, Inc.*, No. 7:06-CV-1537-LSC, 2012 WL 5289511, at *9 (N.D. Ala. Oct. 22, 2012) (same); *Johnson*, 561 F. Supp. 2d at 587.

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