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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ROSARIO JUAREZ

Plaintiffs,

v.

AUTOZONE STORES, INC.,

Defendants.

Case No: 08-cv-00417-WVG

PLAINTIFF ROSARIO JUAREZ'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANT AUTOZONE STORES, INC.'S RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW PURSUANT TO RULE 50(b)

Judge: Hon. William V. Gallo
Courtroom: 2A

Trial: November 3, 2014

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Plaintiff, ROSARIO JUAREZ, respectfully submits the following memorandum of points and authorities in opposition to Defendant, AUTOZONE STORES, INC.'s, renewed motion for judgment as a matter of law pursuant to Rule 50(b):

I. INTRODUCTION

Defendant AutoZone Stores, Inc. ("AutoZone") presents no reason why this Court should depart from its prior denial of AutoZone's motion for judgment as a matter of law pursuant to Federal Rule of Civil Procedure 50(b). AutoZone's renewed motion offers nothing new. Indeed, it offers far less than before. AutoZone's sole argument is that—as a matter of law—its legal department, i.e., AutoZoner Relations, cannot be AutoZone's "managing agent" within the meaning of California Civil Code section 3294 ("section 3294"). Although AutoZone repeatedly refers to an alleged need for "clear and convincing evidence" under section 3294, AutoZone's argument has nothing to do with the evidence. Rather, AutoZone's motion is based entirely on a single and stark legal argument. AutoZone contends that a "managing agent" must be a specifically identified individual. According to AutoZone, regardless of the evidence—even if it is undisputed—an entity or group of individuals can never constitute a "managing agent" under section 3294. And, indeed, in its renewed motion, AutoZone does not dispute that AutoZoner Relations possessed and used the power of a managing agent. Rather, AutoZone's renewed argument is much narrower—that only a specific individual can be a managing agent. Section 3294 contains no such limitation, which defies common sense as well as the statute's language and purpose. And, conspicuously absent from AutoZone's argument is even a single California decision that has ever adopted AutoZone's view. No such rule exists, except in AutoZone's imagination.

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Furthermore, AutoZone's repeated references to clear and convincing evidence are wrong as well as irrelevant. Again, to emphasize, they are irrelevant because AutoZone's argument is untethered to the evidence. As AutoZone sees things, even if AutoZone admitted that AutoZoner Relations acted with malice, oppression, or fraud under section 3294, and even if AutoZone admitted that AutoZoner Relations had full and ultimate corporate-authority for employment matters—including the harassment and termination of Plaintiff Rosario Juarez ("Juarez") —none of the evidence would matter because, according to AutoZone, a group of individuals cannot be a managing agent. One must thus wonder why AutoZone chants the clear-and-convincing-evidence standard as a mantra. But that aside, the argument is wrong as well as beside the point. By the plain language and purpose of section 3294, the clear and-convincing-evidence standard of proof applies only to the type of wrongdoing that will support an award of punitive damages. The question of who is an "officer, director, or managing agent" is subject to the general preponderance-of-the-evidence standard of proof.

II. ARGUMENT

The sole question raised by AutoZone is whether an entity or group within a corporation's management structure can constitute a managing agent under section 3294. But because AutoZone frames that purely legal question in terms of an asserted evidentiary burden—clear and convincing evidence—Juarez will first deal with that distraction. She will then show why AutoZone errs in its view that only a specific individual can be a managing agent.

A. The Alleged Clear-and-Convincing Burden of Proof Advocated by AutoZone is Both Beside the Point and Incorrect.

AutoZone argues that only a specific individual can be a managing agent—period. The facts of this case do not matter to that argument. It raises nothing more than a question of statutory interpretation, which is, by definition, purely a legal

question. (*Western States Petroleum Assn. v. Board of Equalization*, 57 Cal.4th 401, 415 (2013); *Doe v. City of Los Angeles*, 42 Cal.4th 531, 542 (2007) .) Thus, AutoZone's advocacy for clear and convincing evidence is irrelevant— so far in left field that one must surmise it is merely a rhetorical flourish somehow meant to color the Court's statutory interpretation. Indeed, AutoZone cites not a single decision for the novel proposition that statutes are interpreted pursuant to any type of evidentiary burden. If that were the rule, the meaning of a statute would vary from case to case depending on what evidence the parties submit.

Moreover, AutoZone's argument for a clear-and-convincing-evidence burden of proof is wrong. The clear-and-convincing-evidence standard is set forth in subdivision (a) of section 3294, which deals only with the type of misconduct that will support an award of punitive damages. By contrast, the requirement that, for a corporate wrongdoer, the misconduct must be attributed to "an officer, director, or managing agent" is found in subdivision (b) of section 3294, which makes no mention of any particular burden of proof. The two subdivisions deal with different matters. Subdivision (a) deals with *misconduct*. Subdivision (b) deals with *status*, i.e., where in the corporate hierarchy is the misconduct rooted. If the California Legislature had intended the clear-and-convincing burden to govern both questions, the Legislature would have said so. For example, the Legislature could have reiterated the clear-and-convincing standard in subdivision (b). Or the Legislature could have structured section 3294 so that the clear-and-convincing burden would be a separate requirement that plainly applied to both questions, i.e., to misconduct and to status, with something such as, "Plaintiff shall prove by clear and convincing evidence that: (a) Defendant committed the requisite misconduct, and (b) The misconduct is attributed to an officer, director, or managing agent." Indeed, the Legislature has done no such thing. Moreover, AutoZone cites not a single case under section 3294 in which, once having proved the requisite misconduct by clear-and-convincing evidence, the plaintiff was then also required

to show by clear and convincing evidence the status of the wrongdoers, i.e., that they were officers, directors, or managing agents. Juarez, though, will not belabor the point because, as explained above, AutoZone's argument regarding statutory interpretation is unrelated to the evidence or to the burden of proof.

B. "Managing Agent" Under Section 3294 is Not Limited to a Specific Individual. The Focus Is on the Level of Corporate Responsibility, Not on How Many Individuals Shared That Responsibility.

AutoZone repeatedly refers to the need to lay all corporate blame at the feet of "a particular individual" or a "specifically identified individual." In other words, according to AutoZone, only misconduct by a specific individual will permit punitive damages; collective misconduct will never suffice regardless of how much authority the group has. AutoZone's argument fails no matter how it is viewed.

First, AutoZone's "collectivism" argument runs afoul of the plain language of section 3294. It specifically permits punitive damages for misconduct, not only by managing agents, but also by officers and directors. But corporate directors do not act individually. Rather, since the beginnings of corporate law, the clear rule has been that directors can bind their corporation only through collective action. "The directors when not acting as a board have not the necessary power." (*Alta Silver Mining Co. v. Alta Placer Mining Co*., 78 Cal. 629, 633 (1889) "The rule is that the power and authority to manage the affairs of the corporation is vested in the board of directors as a board and not as individual members." [*Scott v. Los Angeles Mountain Park Co.*, 92 Cal.App. 258, 264 (1928); 1 Marsh, CAL. CORPORATION LAW, § 10.14, p. 10-73 (4th ed. 2006) ("[A]n individual director by virtue merely of that office does not have the power to bind the corporation."); 2 Fletcher, CYCLOPEDIA OF THE LAW OF PRIVATE CORPORATIONS, § 505, p. 581 (2006 rev. vol.) ("A corporation does not act through its individual directors, but rather through its board of directors as whole. An individual director has no authority to take action

on behalf of the corporation without the consent of the board of directors."); Margaret Blair, *Locking in Capital: What Corporate Law Achieved for Business Organizations in the Nineteenth Century*, 51 U.C.L.A. L.Rev. 387, 435 (2003) ("The board of directors was legally recognized as an independent entity, and boards were required to act collectively.").]

In short, section 3294 provides for punitive damages when a corporation's directors authorize or ratify the malice, oppression, or fraud. But again, such authorization or ratification is a collective matter. Under AutoZone's view that only individual misconduct will support punitive damages, a corporation could not be liable for punitive damages even if its board of directors unanimously engaged in or ratified the misconduct that would otherwise support punitive damages. Of course, no authority supports that proposition. To the contrary, because a corporation's directors must act collectively, if AutoZone's argument that only individual misconduct will support punitive damages were adopted, section 3294's provision for punitive damages based on directors' misconduct would be rendered a nullity.

Likewise, if collective wrongdoing—either directly, or by authorization, or by ratification—by a corporation's directors will support punitive damages, so will collective wrongdoing by those given substantial discretionary authority, e.g., corporate committees or departments such as AutoZoner Relations. This is made further clear by the language of section 3294, more specifically, by the statutory-interpretation principle of *noscitur a sociis*, i.e., a word takes meaning from the company it keeps. "A word of uncertain meaning may be known from its associates and it meaning enlarged or restricted by reference to the object of the whole clause in which it is used." (*People v. Drennan*, 84 Cal.App.4th 1349, 1355 (2000); *United States v. Williams*, 553 U.S. 285, 294 (2008); *Microsoft v. Commissioner of Internal Revenue*, 311 F.3d 1178, 1184 (9th Cir. 2002).) The Legislature was no doubt aware of the longstanding rule that corporate directors must act collectively. Thus, the

Legislature's reference to "managing agent" must also be deemed to encompass collective action by those persons within a corporation who constitute its "managing agent".

Perhaps AutoZone means to argue that punitive damages are never allowed when two or more persons within a corporation share responsibility for misconduct that otherwise supports punitive damages even if those persons are fully identified. But again, that view ignores that directors must act collectively. Moreover, AutoZone's view is a most curious application of the adage about "strength in numbers". A corporation could delegate full and final responsibility to two or more persons—even officers, who are specified in section 3294 subdivision (b)—and thus never be liable for punitive damages. AutoZone cites not a single case in which that view has ever been adopted. And it is not the rule. For example, in discussing the meaning of "managing agent" under section 3294, the California Supreme Court in *White v.Ultramar, Inc*., 21 Cal.4th 563 (1999) ("*White*"), noted with approval its prior decision in which the Court affirmed a punitive damages award for misconduct committed "jointly" by a corporation's president and its general manager." (*Id*., at 569, citing *Lowe v. Yolo County etc. Water Co*. (1910) 157 Cal. 503, 511-512.)

Perhaps AutoZone more likely means to argue instead that the individual members of a corporate group with the powers of a managing agent must be separately and specifically found liable for the misconduct. That view makes equally little sense. A corporation could designate a committee of five persons to have total authority over corporate policy in a particular area. For example, a corporation's board of directors could delegate full and final authority for personnel decisions to a committee in the corporation's human-resources department. That committee could then openly fire an employee for an illegal reason. Under AutoZone's view, even if the corporation admitted its misconduct and its committee's full responsibility for it, the corporation could not be liable for punitive

damages. Again, unsurprisingly, AutoZone cites no authority that remotely supports AutoZone's view. Not a single California case holds that only a single individual or group of specifically named individuals must be found responsible for the misconduct that will give rise to punitive damages. Rather, the relevant question is whether the misconduct can be placed high enough in the corporate hierarchy. It does not matter if that rung of the corporate ladder is occupied by one person or by a group of them.

The normal starting point, of course, is the statutory language. As explained by the California Supreme Court, section 3294, subdivision (b), does not define "managing agent." (*White*, 21 Cal.4th 563, 572, *supra*.) What section 3294 also does not do is limit the concept of "managing agent" to a single specific individual within a corporation. AutoZone, though, asks this Court to rewrite section 3294 by inserting "individual" before "managing agent" so that it would refer to "an officer, director, *or individual* acting as a managing agent". Such judicial rewriting is not proper. Under California law, a court may not insert into a statute what has been omitted. (Cal. Code Civ. Proc. § 1858; *Security Pacific National Bank v. Wozab*, 51 Cal.3d 991, 998 (1990); *Wells Fargo Bank v. Superior Court*, 53 Cal.3d 1082, 1097 (1991).)[1]

AutoZone's argument that only an individual can be a managing agent also runs afoul of corporate law, which permits a corporation to delegate its management authority to a group of persons, indeed, to an entirely different company. California Corporations Code section 300, subdivision (a) states: "The board may delegate the management of the day-to-day operations of the business of the corporation *to a*

[1] California Code of Civil Procedure section 1858 states: "In the construction of a statute or instrument, the office of the Judge is simply to ascertain and declare what is in terms or in substance contained therein, *not to insert what has been omitted*, or to omit what has been inserted; and where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all." (Italics added.)

management company or other person provided that the business and affairs of the corporation shall be managed and all corporate powers shall be exercised under the ultimate direction of the board." (Italics added.) Put simply, if a corporation's board of directors can name another business to manage the corporation's affairs, by any fair and reasonable understanding, that other business, i.e., that other *group of persons*, is a "managing agent" under California Civil Code section 3294. This further refutes AutoZone's argument that a "managing agent" must be a single, specified individual.

Moreover, AutoZone offers no practical business-reason as to why a corporation would necessarily delegate all power over a particular aspect of the corporation's business to a sole specific person rather than to a group of them. To the contrary, the more important the matter is, the more likely it is that the corporation will want to protect itself from "lone wolf" bad decisions—either business or legal—by delegating shared responsibility to a group. Thus, from a business standpoint, there is no reason why a group such as AutoZoner Relations cannot be a managing agent.

Moreover, although "managing agent" is not defined in section 3294, the proper understanding of "managing agent" is shown by *White*, the controlling decision. As *White* makes clear, the touchstone for determining whether the misconduct was committed by a managing agent is whether the person or persons who committed the wrongdoing had "substantial discretionary authority". (*White*, *supra*, 21 Cal.4th at 577.) *White* offers not a whiff of a suggestion that the proper definition of "managing agent" depends on whether this authority is exercised by one person or by a group of them. Nor does any other California appellate court decision. To the contrary, as AutoZone's own authority makes clear, the touchstone of the required analysis under California law is to avoid, "punishing the corporation for malice of low-level employees which does not reflect the corporate 'state of mind' or the intentions of corporate leaders. This assures that punishment is

imposed only if the *corporation* can fairly be viewed as guilty of the evil intent sought to be punished." (*Cruz v. Homebase*, 83 Cal.App.4th 160, 167 (2000) (italics by the court), citing *White*, *supra*, 21 Cal.4th at p. 569.) Misconduct by a recognized and duly authorized group within a corporation is far more likely to represent official corporate policy than is misconduct by a rogue corporate-employee.

C. AutoZoner Relations Possessed and Exercised "Substantial Discretionary Authority" Over Personnel Decisions, Including Terminations.

As noted at the outset, AutoZone's renewed motion for judgment as a matter of law is most narrow. AutoZone's argument plainly seems to be that only a specified individual can be a managing agent under section 3294. However, if the motion is generously viewed as also arguing that AutoZoner Relations did not have the requisite "substantial discretionary authority," that argument fails on that ground as well. AutoZone offers nothing on this point that is different from its original motion for judgment as a matter of law. Moreover, the evidence is clear that AutoZoner Relations had such authority, as this Court previously found when it denied AutoZone's original motion.

Before turning to the specific evidence, though, what merits note is AutoZone's suggestion—albeit seemingly in passing—that a corporation is allowed to determine its own liability for punitive damages. More specifically, AutoZone suggests that, to be a "managing agent," the agent must set corporate policy, but policy-making is not the touchstone; rather, it is "substantial discretionary authority," as explained in *White*. Indeed, in *White*, the Court affirmed the punitive-damage award based on misconduct by a supervisor far lower on the corporate ladder that AutoZoner Relations is on AutoZone's ladder. The culpable person was a mere supervisor who was responsible for eight stores and 65 employees. (*White*, *supra*, 21 Cal.4th at 577.) There is no mention whatsoever of that supervisor having any policy-making authority. And, in a concurring opinion, Justice Mosk made

clear why the rule advocated by that defendant, and seemingly suggested here by AutoZone, makes no sense. "Ultramar [defendant] urges that the term 'managing agent' should be construed to mean only someone with final policymaking authority akin to that of a very high-ranking corporate director or officer. Like the majority, I reject such a standard as too narrow and too vague; strictly applied it would appear to absolve a corporate employer of liability in almost every case, particularly a large corporation with many levels of hierarchy." (*White*, 21 Cal.4th at 582 (conc. opn. of Mosk, J.). Also noteworthy is Justice Mosk's common-sense observation that if formal corporate-policy were the touchstone, punitive damages could never be awarded because no corporation will ever adopt a formal policy of illegal employment-discrimination. (*Ibid*.)

The evidence presented in this case very clearly demonstrated that AutoZoner Relations was a managing agent of AutoZone because AutoZoner Relations possessed and exercised substantial discretionary authority over personnel decisions, including terminations. AutoZoner Relations is the legal department of AutoZone. (Vol. X, 51:25 – 52:1). They advise the company on legal issues in the employment law area, manage the litigation of the company, manage the unemployment compensation response and area of the company, manage the policy center, and make recommendations and personnel decisions regarding AutoZone's employees. (Vol. III, 108:7-10; Vol. IV, 64:20-23; Vol. X, 51:21 – 52:6). A reasonable person could conclude that the evidence presented in this case very clearly showed that AutoZoner Relations recommended, advised, and decided all employee-related decisions regarding demotion, suspension, termination, etc., including orchestrating the decision to both demote and terminate Juarez in this case. (Doc. 283, 7:11-18; Vol. X, 14:21-24.)

AutoZoner Relations is central to AutoZone's policy making. (Vol. IV, 41:18-21; Vol. VI, 77:6-7; Vol. X, 51:23 - 52:6). AutoZoner Relations is located in Memphis, TN, the site of the company's headquarters. (Doc. 283, 7:11-18; Vol. X,

55:18-21). AutoZone's policies come from Memphis and AutoZoner Relations manages AutoZone's policy center. (Vol. IV, 41:18-21; Vol. VI, 77:6-7; Vol. X, 51:23 - 52:6.) Additionally, AutoZoner Relations advises the company as a whole, not just in the United States, regarding matters of employment law, litigation, and other areas that AutoZone is involved in both domestically and internationally. (Vol. X, 72:2-6).

The evidence in this case also indicated that most, if not all, personnel decisions were directed to AutoZoner Relations, who provided advice and recommendations, if not actually made hiring/firing and other decisions. (Doc. 283, 7:11-18; Vol. VII, 151:9-16; Vol. VII, 153:2-14; Vol. X, 14:21-24). The normal procedure for problem-solving within AutoZone when an employee issue arose was to go to the store manager; district manager; regional human resource manager; divisional human resource manager; and/or, AutoZoner Relations. (Vol. VII, 59:6-11). In addition to this, if an employee wanted to make a complaint they were directed to call a hotline that went straight to AutoZoner Relations. (Vol. V, 195:9-11; Vol. VII, 149:18-21). The evidence was also very clear that AutoZoner Relations spoke on behalf the company regarding employment issues, such as responding to a Department of Fair Employment and Housing ("DFEH") charge. (Exh. 218; Doc. 283, 7:11-18; Vol. III, 101:17 – 102:16).

In addition to being involved directly in the employee complaint process, the evidence demonstrated that AutoZoner Relations issued the final recommendation/decision on an employee's continued employment with AutoZone. (Vol. II, 60:10-20; Vol. VI, 86:12-19). For example, a loss prevention investigation is not closed until a loss prevention manager receives a recommendation from AutoZoner Relations regarding the investigated employee's continued employment. (Vol. II, 60:10-20; Vol. VI, 86:12-19). A reasonable person could also conclude from the evidence that the management team running each division could not go against or challenge AutoZoner Relations'

recommendation/decision regarding an employee's continued employment with AutoZone. (Vol. III, 108:7-10).

The evidence also demonstrated that AutoZoner Relations speaks for the company, as AutoZone sent AutoZoner Relations' Director, Alison Smith, to represent the company during the punitive damages phase of trial. (Vol. X, 51:21 – 52:6). Smith testified that she was there to "advise the company" from any feedback the jury gave and that she would "personally [] advise the company in areas that [they] need to make changes, improvements or take appropriate action." (Vol. X, 70:15-20.) Smith also testified that AutoZone was extremely concerned and that she was there, so she could change the company for the better. (Vol. X, 53:1-10).

In this case, a reasonable person could conclude from the evidence presented at trial that AutoZoner Relations masterminded and orchestrated the decision to both demote and terminate Juarez. (Doc. 283, 7:11-18; Vol. X, 14:21-24.) Regarding Juarez's demotion, the evidence indicated through Staci Saucier's, the regional human resources manager, declarations that she and Daniel Merchant, the regional manager, consulted with and received recommendations from AutoZoner Relations in making the decision to demote Juarez after a sham investigation was conducted. (Doc. 283, 7:11-18; Exh. 24; Exh. 47; Exh. 50; Exh. 51; Vol. II, 120:21 – 123:9; Vol. II ,127:9 – 130:1; Vol. II, 188:17-25; Vol. IV, 131:1 – 134:20; Vol. IV, 144:21-25; Vol. IV, 164:14 – 174:10; Vol. V, 50:18 – 51:14; Vol. VII, 151:9-16; Vol. VII, 153:2-14). Additionally, Saucier's declarations showed that she indicated that Juarez was not meeting her performance expectations. (Vol. VII; 151:9-16; Vol. VII, 153:2-14). However, the evidence indicated that this was false because Juarez was meeting her sales targets at her store. (Exh. 24; Vol. IV, 164:14 – 174:10). Therefore, a reasonable person could conclude that AutoZoner Relations ratified Juarez's demotion by recommending that she be demoted based on untrue information. (Exh. 24; Vol. IV, 164:14 – 174:10; Vol. VII; 151:9-16; Vol. VII, 153:2-14).

After being demoted Juarez filed a DFEH complaint for discrimination based on her sex, which the evidence showed that AutoZoner Relations was aware of. (Exh. 36; Exh. 218; Doc. 283, 7:11-18; Vol. X, 67:23 – 68:11). In fact, AutoZoner Relations responded to the DFEH in a letter which a reasonable person could determine that AutoZoner Relations falsely claimed that they "thoroughly investigated" Juarez's complaint. (Exh. 218; Vol. IV, 137:22 – 138:4; Vol. IV, 138:16-21; Vol. V, 202:20-23; Vol. VII, 140:5-10; Vol. VII, 154:13-15). In fact, Smith stated that she was aware that AutoZoner Relations received Juarez's DFEH complaint and testified that AutoZoner Relations responded with the information available to them. (Vol. X, 67:23 – 68:11). However, the evidence demonstrated that AutoZoner Relations never spoke to Juarez in investigating the DFEH complaint. (Vol. IV, 137:22 – 138:4). They never spoke to Alejandra Perez, Juarez's Part Sales Manager. (Vol. IV, 138:16-19; Vol. VII, 140:5-10; Vol. VII, 154:13-15). They never spoke to Omar Cortez, Juarez's second Part Sales Manager. (Vol. IV, 138:16-21; Vol. V, 202:20-23). And AutoZoner Relations never spoke to Mr. Merchant before responding to the DFEH. (Vol. III, 98:22 – 99:3; Vol. III, 102:17-25). However, AutoZoner Relations had Kent McFall, the district manager that harassed Juarez, submit a declaration in support of their response to the DEFH. (Vol. VII, 67:17 – 68:16). However, the evidence showed that McFall did not even look for records when AutoZoner Relations contacted him about preparing a response to Juarez's DFEH charge. (Vol. VII, 110:23 – 111:8).

With regard to Juarez's termination, a reasonable person could conclude from the evidence presented that AutoZoner Relations terminated Juarez in retaliation for filing a DFEH complaint. (Vol. I, 92:22-24; Vol. I, 97:4 – 98:7; Vol. III, 13:22 – 15:6). The evidence demonstrated that it was likely Alison Smith driving the investigation of Juarez regarding the missing cash by directing Troy Young, the divisional loss prevention manager, on how to conduct the investigation. (Vol. I, 91:3 – 92:24; Vol. I, 97:4 – 98:7; Vol. II, 70:22 – 71:2). In fact, the evidence

demonstrated that Juarez was the target of this investigation. (Vol. I, 107:11-21). This was so evident that Gloria Fausto ("Fausto"), the loss prevention manager conducting the investigation of the missing cash, had a suspicion that Juarez had a lawsuit against AutoZone at the time of the investigation based on the urgency to investigate this incident and the unusual instructions she received about how to conduct the investigation. (Vol. I, 91:3 – 92:24; Vol. I, 93:6 – 94:5; Vol. I, 109:16 – 110:7). Fausto believed that Juarez was being retaliated against. (Vol. I, 124:10-12).

The evidence then showed that immediately following this investigation into the missing cash, Juarez was placed on suspension and then was terminated shortly after. (Vol. I, 107:14-21; Vol. II, 58:21-22). A reasonable person could conclude this was very unusual as the evidence demonstrated that generally an individual is only suspended when there is hard concrete evidence, such as a video. (Vol. II, 54:17 – 55:7). The evidence also demonstrated that Fausto had never seen anyone suspended, let alone terminated, when they did not even have a written statement. (Vol. II, 54:17 – 55:7). Additionally, Fausto, the individual who conducted the investigation, did not even see a need to suspend Juarez. (Vol. II, 55:6-7).

In addition to this evidence, Fausto testified that after the investigation she prepared a unique written summary detailing her investigation into the missing cash, which she sent directly to AutoZoner Relations, so a recommendation could be made regarding what was going to happen to Juarez. (Vol. I, 115:21 – 116:8; Vol. II, 44:5-14). Interestingly, the evidence showed that this detailed summary submitted to AutoZoner Relations was never seen again, even when Fausto was giving testimony as the person most knowledgeable on behalf of AutoZone regarding this incident. (Vol. I, 116:16-25).

Juarez was terminated on November 20, 2008. (Vol. II, 58:21-22). Fausto submitted her incident report, which completed her investigation into the missing cash to AutoZoner Relations on December 8, 2008. (Vol. II, 58:23 – 59:22). The

incident report was submitted more than a month after the investigation due to the fact that Fausto was waiting for AutoZoner Relations to make a recommendation as to Juarez's continued employment or termination. (Vol. II, 60:1-9). At the time of Juarez's termination, Fausto's investigation was not closed due to the fact she had not received a recommendation from AutoZoner Relations, and she had not submitted the incident report into AutoZone's system. (Vol. II, 60:21-25). Additionally, Guillermo Romero, Juarez's store manager, was not consulted before Juarez was terminated, did not expect her to be terminated, and did not wish for her to be terminated. (Vol. III, 16:1-14; Vol. III, 28:9-11; Vol. III, 29:1-5; Vol. III, 38:18-21).

The person most knowledgeable on behalf of AutoZone regarding the termination and suspension of Juarez, John Gonzalez, had no idea why Juarez was suspended or terminated. (Vol. IV, 52:18 -25; Vol. IV, 59:19-23; Vol. IV, 60:11-14). Henry Alatorre, the district manager witnessing the investigation into the missing cash, had no knowledge regarding why Juarez was suspended or terminated. (Vol. VI, 68:17-19). The evidence showed Fausto had no idea why Juarez was terminated either. (Vol. 1, 122:18-23). And finally, the evidence demonstrated that Mr. Merchant was not aware of the reason that Juarez was terminated during his deposition, but did know at trial only after refreshing his memory with documents that her relied on to terminate her, including Fausto' investigative report submitted to AutoZoner Relations after Juarez had already been terminated. (Vol. III, 118:24 – 122:22; Vol. III, 126:14 – 129:17) Given all of the evidence presented, a reasonable person could conclude that AutoZoner Relations gave the directive to both demote and terminate Juarez and therefore, possessed and exercised substantial discretionary authority over personnel decisions.

D. Juarez Reasserts Her Argument that Rick Smith, Dan Merchant, Staci Saucier, Troy Young, and Kent McFall Were Managing Agents of AutoZone.

In its order denying AutoZone's initial motion for judgment as a matter of law, this Court ruled that neither AutoZone employees Rick Smith, Dan Merchant, Staci Saucier, Troy Young, nor Kent McFall were officers, directors, or managing agents under section 3294. Juarez hereby respectfully reasserts her argument that these individuals were managing agents under section 3294. Substantial evidence supports that view. Juarez will not burden the Court with a reiteration of that evidence. Rather, she hereby relies on and incorporates by reference her opposition and oral argument to AutoZone's initial motion for judgment as a matter of law. (Doc. 257; Vol. VII, 25:21 – 26:3). Moreover, if this Court, as it should, denies AutoZone's renewed motion for judgment as a matter of law, AutoZone will no doubt appeal from this Court's judgment. Juarez, therefore, wishes to be clear that she is preserving for a potential cross-appeal based on her argument that these named individuals, as well as AutoZoner Relations, were managing agents under section 3294.

III. CONCLUSION

For the foregoing reasons Plaintiff, ROSARIO JUAREZ, respectfully requests that this Court deny Defendant, AUTOZONE STORES, INC.'s, renewed motion for judgment as a matter of law pursuant to Rule 50(b).

Date: January 15, 2015

By: /S/: *Lawrance A. Bohm*

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