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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Michael L. Taylor; Dilawar Khan; Volena) )  
Glover-Hale; Manuel Montoya, on behalf) )  
of themselves and other persons similarly) )  
situated, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
AutoZone Inc., a Tennessee corporation;) )  
AutoZone Inc., a Nevada corporation;) )  
AutoZoners LLC, )  
 )  
Defendants. )  
 )

No. CV-10-8125-PCT-FJM

**ORDER**

Before the court is plaintiffs’ motion to confirm collective certification (doc. 312), defendants’ response (doc. 317), and plaintiffs’ reply (doc. 318).

**I.**

On May 24, 2011, we conditionally certified a class of current and former AutoZone Store Managers whom AutoZone classifies as exempt from the overtime pay requirement under the executive exemption of the Fair Labor Standards Act, 29 U.S.C. § 213(a)(1) (doc. 67). We also granted summary judgment in favor of AutoZone, concluding that it had established that the Store Manager position meets each element of the FLSA executive exemption. See 29 C.F.R. § 541.100(a); (doc. 278). On appeal, the United States Court of

1 Appeals for the Ninth Circuit reversed and remanded for trial, concluding that “conflicting  
2 evidence” prevents disposition of Plaintiffs’ FLSA claims as a matter of law. Plaintiffs now  
3 move to confirm certification of the plaintiffs’ claims as a collective action.

## 4 II.

5 The Fair Labor Standards Act (“FLSA”) requires that employers pay their employees  
6 time and a half for hours worked in excess of forty hours per week, unless the employees fall  
7 into one of the statutory exemptions. 29 U.S.C. § 207(a)(1). Exempt employees include  
8 “any employee employed in a bona fide executive . . . capacity.” *Id.* § 213(a)(1). The FLSA  
9 authorizes collective actions against an employer “by any one or more employees for and in  
10 behalf of himself or themselves and other employees similarly situated.” 29 U.S.C. § 216(b).  
11 A collective action allows for the “efficient resolution in one proceeding of common issues  
12 of law and fact arising from the same alleged activity.” *Hoffmann-LaRoche, Inc. v. Sperling*,  
13 493 U.S. 165, 170, 110 S. Ct. 482, 486 (1989).

14 Applying a two-tiered approach, we have already conditionally certified a class of  
15 Store Managers and notice was given (doc. 67 as amended by doc. 87). Subsequently, 1,476  
16 current or former AutoZone Store Managers opted into this action under 29 U.S.C. § 216(b).  
17 At step two—the decertification stage—we apply a more rigorous analysis, with the benefit of  
18 a more fully developed record, to determine whether the plaintiffs are “similarly situated”  
19 to justify proceeding as a collective action. Plaintiffs must “provide substantial evidence to  
20 demonstrate” that they are “similarly situated” to the individuals whom they intend to  
21 represent. *Reed v. County of Orange*, 266 F.R.D. 446, 449 (C.D. Cal. 2010); *Anderson v.*  
22 *Cagle’s, Inc.*, 488 F.3d 945, 953 (11th Cir. 2007).

23 Similar does not mean identical. *Grayson v. K Mart Corp.*, 79 F.3d 1086, 1096 (11th  
24 Cir. 1996). “The FLSA does not require class members to hold identical positions.” *Morgan*  
25 *v. Family Dollar Stores, Inc.*, 551 F.3d 1233, 1261-62 (11th Cir. 2008). Instead, a named  
26 plaintiff may show that putative plaintiffs are similarly situated when their claims are  
27 “unified by common theories of defendants’ statutory violation, even if the proofs of these  
28 theories are inevitably individualized and distinct.” *O’Brien v. Ed Donnelly Enters.*, 575

1 F.3d 567, 585 (6th Cir. 2009).

2 Although the “similarly situated” requirement is more stringent at the second stage,  
3 it remains less stringent than the requirement that common questions predominate in  
4 certifying class actions under Rule 23, Fed. R. Civ. P. “All that need be shown . . . is that  
5 some identifiable factual or legal nexus binds together the various claims of the class  
6 members in a way that hearing the claims together promotes judicial efficiency and comports  
7 with the broad remedial policies underlying the FLSA.” Hutton v. Bank of America, 2007  
8 WL 5307976, at \* 1 (D. Ariz. Mar. 31, 2007); O’Brien, 575 F.3d at 585 (Plaintiffs are  
9 similarly situated when “they suffer from a single, FLSA-violating policy, and when proof  
10 of that policy . . . proves a violation as to all the plaintiffs.”). On the other hand, “where  
11 there appears to be substantially different employment experiences among the various  
12 [claimants], the procedural advantages of a collective action cannot be realized.” Hernandez  
13 v. United Auto Credit Corp., 2010 WL 1337702, \*5 (N.D. Cal. April 2, 2010).

### 14 III.

15 In determining whether plaintiffs are “similarly situated,” we consider factors such  
16 as (1) disparate factual and employment settings of the individual plaintiffs; (2) whether  
17 defendants’ various defenses will require individual proof; and (3) fairness and procedural  
18 considerations. Leuthold v. Destination Am., Inc., 224 F.R.D. 462, 467 (N.D. Cal. 2004).  
19 Ultimately, the issue is whether plaintiffs are similarly situated such that the key elements  
20 of the FLSA claim can be addressed through representational proof.

21 The executive exemption applies to an employee (1) who is compensated on a salary  
22 basis of not less than \$455 per week; (2) whose primary duty is management; (3) who  
23 “customarily and regularly directs the work of two or more other employees”; and (4) who  
24 “has the authority to hire or fire other employees or whose suggestions and recommendations  
25 . . . are given particular weight.” 29 C.F.R. § 541.100(a). The primary duty analysis is based  
26 on the totality of the circumstances, “with the major emphasis on the character of the  
27 employee’s job as a whole.” 29 C.F.R. § 541.700(a).

28 AutoZone argues that the propriety of the Store Managers’ exempt executive

1 classification hinges on the “intensely factual nature” of their individual job duties, which  
2 would require individualized scrutiny, resulting in hundreds of mini-trials, and that without  
3 this individualized scrutiny, it will be deprived of its ability to present legitimate defenses  
4 to the asserted claims. We disagree.

5 **A. Disparate Factual and Employment Settings of the Individual Class**  
6 **Members**

7 When comparing the factual and employment settings of class members as part of a  
8 similarly situated inquiry, we consider factors such as whether plaintiffs had differing job  
9 titles or duties, worked in different geographic locations, worked under different supervisors,  
10 or allege different types of violative conduct. Reed, 266 F.R.D. at 450.

11 AutoZone’s nationwide stores are operated in a highly standardized manner. The  
12 country is divided into geographical divisions, regions, and districts, with each district  
13 containing between 8 and 10 stores, with an average of 8 to 11 employees in each store.  
14 Each region has a Regional Manager, and each district has a District Manager who directly  
15 supervises the Store Manager in each of the stores within a district.

16 AutoZone admits that it does not classify Store Managers based on individual  
17 performance, but instead classifies every Store Manager as exempt under the executive  
18 exemption.<sup>1</sup> AutoZone’s own documents treat the Store Manager position, company-wide,  
19 as a singular job category with consistent essential features. Though not dispositive, this  
20 common classification supports a conclusion that class members are similarly situated.  
21 “[C]ourts have long found that comprehensive uniform policies detailing the job duties and  
22 responsibilities of employees carry great weight for certification purposes.” In re Wells  
23 Fargo Home Mortg. Overtime Pay Litig., 571 F.3d 953, 958 (9th Cir. 2009) (applying the  
24 more rigorous Fed. R. Civ. P. 23(b)(3) analysis).

25 Every Store Manager has the same job title and same job description. Each Store  
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27 <sup>1</sup>AutoZone does not classify California Store Managers as exempt and therefore these  
28 Managers are not included in the conditionally certified class.

1 Manager receives a base salary and no paid overtime regardless of hours worked. Each is  
2 subject to the same corporate labor model that capitalizes on Store Manager’s exempt status  
3 by transferring non-managerial duties to Store Managers to perform during unpaid overtime  
4 hours.

5 Store Managers are also alike in that all hiring and firing authority rests with the  
6 District and Regional Managers, and not the Store Managers. Initial job applications are  
7 processed by a computerized eHire system. A Store Manager follows a preset script in  
8 interviewing a prospective employee, filing out a checklist, and submitting the form to the  
9 District Manager who then evaluates and hires candidates. (Doc. 265 ¶¶ 15(d), 18, 21). All  
10 Store Managers are similar in their inability to authorize raises or promotions, to close stores  
11 in emergencies, or to make any decisions concerning pricing or inventory. (Doc. 265 ¶  
12 13(j)). A computerized store management system allows District Managers to closely  
13 monitor store sales, set individual employee’s schedules, and generate task lists. (Doc. 265  
14 ¶¶ 6(c)(e), 13(f)-(g)).

15 Plaintiffs’ legal claims—that defendants violated the FLSA by improperly classifying  
16 all Store Managers as exempt “executives” even though their primary duty was not serving  
17 as an executive—are substantially similar for all Plaintiffs. Representational proof may  
18 establish among other things (1) AutoZone’s universal classification of Store Managers with  
19 the same job duties; (2) the average amount of time Store Managers spend on managerial  
20 versus non-managerial duties; (3) restrictions on Store Manager’s authority to manage stores;  
21 (4) the amount of supervision of Store Managers by District Managers; and (5) Store  
22 Managers’ limited authority to give pay raises or promotions, or to close stores in  
23 emergencies, or choose vendors.

24 The uniformity results in large part from AutoZone’s companywide policies  
25 concerning job descriptions and job duties, as well as the standardization, automation, and  
26 centralized tracking and control of their day-to-day activities. A Store Manager’s  
27 employment experience is therefore substantially similar regardless of geographical location.

28 Based on testimony of several individual Store Managers, AutoZone contends that too

1 many disparities exist between class members' actual employment experiences to permit a  
2 finding that Store Managers are universally misclassified. For example, AutoZone cites to  
3 two Store Managers who testified that they do not believe that they were "in charge" of their  
4 stores. However, an individual Store Manager's own estimation of his primary duties, or  
5 whether he believed he was "in charge" of the store, is not dispositive of his primary duties  
6 as a Store Manager. AutoZone's focus on an individualized analysis ignores the FLSA's  
7 "major emphasis on the character of the employee's job as a whole." 29 C.F.R. § 541.700(a).

8 Defendants also rely on a survey circulated to the opt-in class members by Plaintiffs'  
9 expert, David Lewin, Ph.D., along with an "expert analysis" of the answers received from  
10 1,057 of those solicited. Defendants contend that the survey results illustrate why the  
11 plaintiffs' class claim is not amenable to representative proof, and in fact suggest that at least  
12 a substantial percentage of the class was properly classified as exempt. But "[j]ust because  
13 the inquiry is fact-intensive does not preclude a collective action where plaintiffs share  
14 common job traits." Morgan, 551 F.3d at 1263. While some AutoZone Store Managers may  
15 report different experiences, there is no evidence that Store Managers' jobs differ in essential  
16 character.

17 It is indisputable that the putative class members share uniform job traits and  
18 responsibilities, compensation incentives, training, and evaluation criteria. Slight variations  
19 among individual Store Manager's experiences are not enough to preclude a collective action  
20 under the FLSA. It will be up to the jury to weigh the evidence to determine whether the  
21 essential character of the Store Manager's job is executive or non-executive, but the essential  
22 character of the job can be established by representational proof.

### 23 **B. Individualized Defenses**

24 The second factor we consider on decertification is whether AutoZone asserts  
25 defenses that would require individualized proof. Reed, 266 F.R.D. at 460. Defendants  
26 contend that, because there are significant differences among the job duties of the putative  
27 class members, defenses to the Plaintiffs' claim will require individualized proof. This is  
28 essentially the same argument that the class members' job duties differ. Again, the FLSA

1 does not require class members to hold identical positions. The “major emphasis [is] on the  
2 character of the employee’s job as a whole.” 29 C.F.R. § 541.700(a).

3 We have already concluded that the putative class members are similarly situated with  
4 respect to the essential character of their job duties. Therefore, an individualized assessment  
5 of each Store Manager’s job duties, and accordingly AutoZone’s defenses, is not necessary.

6 **C. Fairness and Manageability**

7 In evaluating the third factor, we consider the primary objectives of a collective  
8 action: (1) to lower plaintiffs’ costs through the pooling of resources, and (2) to limit the  
9 controversy to one proceeding so as to efficiently resolve common issues of law and fact  
10 without prejudice to either party. Reed, 266 F.R.D. at 462.

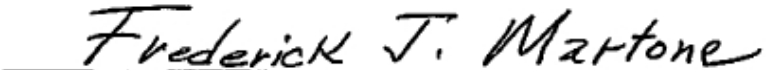
11 Here there exists a significant, identifiable factual and legal nexus that binds together  
12 the various claims of the class members in a way that hearing the claims together promotes  
13 judicial efficiency and comports with the broad remedial policies underlying the FLSA.  
14 Hutton v. Bank of Am., 2007 WL 5307976, at \*1 (D. Ariz. Mar. 31, 2007).

15 All potential plaintiffs were affected identically by defendants’ decision to classify the Store  
16 Managers as exempt from the overtime pay requirement. A policy or practice that is  
17 common to all potential Plaintiffs is a strong factor in favor of certification. Moreover, the  
18 evidence demonstrates that a Store Manager’s primary duties, as well as their authority to  
19 hire and fire are substantially similar to each other, such that proceeding as a collective  
20 action is both efficient and fair. Plaintiffs have sufficiently shown a factual nexus between  
21 all Store Managers to justify proceeding as a collective action.

22 **III. CONCLUSION**

23 **IT IS ORDERED GRANTING** Plaintiffs’ motion to confirm collective class  
24 certification (doc. 312).

25 DATED this 10<sup>th</sup> day of November, 2014.

26 

27 Frederick J. Martone  
28 Senior United States District Judge