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 7 AUTOZONE, INC.

8 UNITED STATES DISTRICT COURT
 9 EASTERN DISTRICT OF CALIFORNIA

10 GLENN BLACKMAN,

Case No. 2:17-CV-00659-JAM-DB

11 Plaintiff,

STIPULATED PROTECTIVE ORDER

12 v.

13 AUTOZONE, INC., and DOES 1 through
 14 20, inclusive,

15 Defendants.

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 17 1. PURPOSES, LIMITATIONS, AND GOOD CAUSE STATEMENT

18 Disclosure and discovery activity in this action are likely to involve production of private
 19 information for which special protection from public disclosure and from use for any purpose other
 20 than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and
 21 petition the court to enter the following Stipulated Protective Order.

22 The parties acknowledge that this Stipulated Protective Order does not confer blanket
 23 protections on all disclosures or responses to discovery and that the protection it affords from public
 24 disclosure and use extends only to the limited information or items that are entitled to confidential
 25 treatment under the applicable legal principles. The parties further acknowledge, as set forth in
 26 Section 11.3, below, that this Stipulated Protective Order does not entitle them to file confidential
 27 information under seal; Civil Local Rule 141 sets forth the procedures that must be followed and the
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1 standards that will be applied when a party seeks permission from the court to file material under
2 seal.

3 This action may involve private personnel information regarding non-parties, as well as trade
4 secrets or competitively sensitive confidential and/or proprietary information regarding Defendant's
5 business and operations, including but not limited to, confidential business or financial information;
6 information regarding confidential business practices, or other confidential research, development,
7 or commercial information (including information implicating privacy rights of third parties); and
8 proprietary information that would otherwise not generally be available to the public, or which may
9 be privileged or otherwise protected from disclosure under applicable laws.

10 Accordingly, to expedite the flow of information, facilitate the prompt resolution of disputes
11 over confidentiality of discovery materials, to adequately protect information the parties are entitled
12 to keep confidential, to address their handling at the end of litigation, and serve the ends of justice, a
13 protective order for such information is justified. It is the intent of the parties that information will
14 not be designated confidential for tactical reasons and that nothing be so designated without a good
15 faith belief that it has been maintained in a confidential, non-public manner and there is good cause
16 why it should not be part of the public record in this case.

17 **2. DEFINITIONS**

18 2.1 **Challenging Party**: a Party or Non-Party that challenges the designation of
19 information or items under this Order.

20 2.2 **"CONFIDENTIAL" Information or Items**: information (regardless of how it is
21 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of
22 Civil Procedure 26(c).

23 2.3 **Counsel (without qualifier)**: Outside Counsel of Record and House Counsel (as well
24 as their support staff).

25 2.4 **Designating Party**: a Party or Non-Party that designates information or items that it
26 produces in disclosures or in responses to discovery as "CONFIDENTIAL."
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1 2.5 Disclosure or Discovery Material: all items or information, regardless of the medium
2 or manner in which it is generated, stored, or maintained (including, among other things, testimony,
3 transcripts, and tangible things), that are produced or generated in disclosures or responses to
4 discovery in this matter.

5 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to
6 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
7 consultant in this action.

8 2.7 House Counsel: attorneys (and their support staffs) who are employees of a party to
9 this action. House Counsel does not include Outside Counsel of Record or any other outside
10 counsel.

11 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal
12 entity not named as a Party to this action.

13 2.9 Outside Counsel of Record: attorneys (and their support staffs) who are not
14 employees of a party to this action but are retained to represent or advise a party to this action and
15 have appeared in this action on behalf of that party or are affiliated with a law firm which has
16 appeared on behalf of that party.

17 2.10 Party: any party to this action, including all of its officers, directors, employees,
18 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

19 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
20 Material in this action.

21 2.12 Professional Vendors: persons or entities that provide litigation support services
22 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,
23 storing, or retrieving data in any form or medium) and their employees and subcontractors.

24 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
25 “CONFIDENTIAL.”

26 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a
27 Producing Party.

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3. SCOPE

The protections conferred by this Stipulated Protective Order cover not only Protected Material (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material. However, the protections conferred by this Stipulated Protective Order do not cover the following information: (a) any information that is in the public domain at the time of disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of publication not involving a violation of this Order, including becoming part of the public record through trial or otherwise; and (b) any information known to the Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the information lawfully and under no obligation of confidentiality to the Designating Party.

Any use of Protected Material at trial shall be governed by a separate agreement or order.

4. DURATION

Even after final disposition of this litigation, the confidentiality obligations imposed by this Stipulated Protective Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-Party that designates information or items for protection under this Stipulated Protective Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. The Designating Party must designate for protection only those parts of material,

1 documents, items, or oral or written communications that qualify – so that other portions of the
2 material, documents, items, or communications for which protection is not warranted are not swept
3 unjustifiably within the ambit of this Order.

4 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown
5 to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily
6 encumber or retard the case development process or to impose unnecessary expenses and burdens on
7 other parties) expose the Designating Party to sanctions.

8 If it comes to a Designating Party’s attention that information or items that it designated for
9 protection do not qualify for protection, that Designating Party must promptly notify all other Parties
10 that it is withdrawing the mistaken designation.

11 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
12 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
13 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
14 designated before the material is disclosed or produced.

15 Designation in conformity with this Order requires:

16 (a) for information in documentary form (e.g., paper or electronic documents, but
17 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party
18 affix the legend “CONFIDENTIAL” to each page that contains protected material. If only a portion
19 or portions of the material on a page qualifies for protection, the Producing Party also must clearly
20 identify the protected portion(s) (e.g., by making appropriate markings in the margins).

21 A Party or Non-Party that makes original documents or materials available for inspection
22 need not designate them for protection until after the inspecting Party has indicated which material it
23 would like copied and produced. During the inspection and before the designation, all of the material
24 made available for inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has
25 identified the documents it wants copied and produced, the Producing Party must determine which
26 documents, or portions thereof, qualify for protection under this Order. Then, before producing the
27 specified documents, the Producing Party must affix the “CONFIDENTIAL” legend to each page
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1 that contains Protected Material. If only a portion or portions of the material on a page qualifies for
2 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making
3 appropriate markings in the margins).

4 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
5 Designating Party identify on the record, before the close of the deposition, hearing, or other
6 proceeding, all protected testimony.

7 (c) for information produced in some form other than documentary and for any other
8 tangible items, that the Producing Party affix in a prominent place on the exterior of the container or
9 containers in which the information or item is stored the legend “CONFIDENTIAL.” If only a
10 portion or portions of the information or item warrant protection, the Producing Party, to the extent
11 practicable, shall identify the protected portion(s).

12 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
13 designate qualified information or items does not, standing alone, waive the Designating Party’s
14 right to secure protection under this Order for such material. Upon timely correction of a
15 designation, the Receiving Party must make reasonable efforts to assure that the material is treated in
16 accordance with the provisions of this Order.

17 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

18 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
19 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality
20 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,
21 or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a
22 confidentiality designation by electing not to mount a challenge promptly after the original
23 designation is disclosed.

24 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process
25 by providing written notice of each designation it is challenging and describing the basis for each
26 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must
27 recite that the challenge to confidentiality is being made in accordance with this specific paragraph
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1 of the Stipulated Protective Order. The parties shall attempt to resolve each challenge in good faith
2 and must begin the process by conferring directly (in voice to voice dialogue; other forms of
3 communication are not sufficient) within 14 days of the date of service of notice. In conferring, the
4 Challenging Party must explain the basis for its belief that the confidentiality designation was not
5 proper and must give the Designating Party an opportunity to review the designated material, to
6 reconsider the circumstances, and, if no change in designation is offered, to explain the basis for the
7 chosen designation. A Challenging Party may proceed to the next stage of the challenge process only
8 if it has engaged in this meet and confer process first or establishes that the Designating Party is
9 unwilling to participate in the meet and confer process in a timely manner.

10 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
11 intervention, the Designating Party shall file and serve a motion to retain confidentiality under Civil
12 Local Rule 141.1 (and in compliance with Civil Local Rule 251, if applicable) within 21 days of the
13 initial notice of challenge or within 14 days of the parties agreeing that the meet and confer process
14 will not resolve their dispute, whichever is earlier. Each such motion must be accompanied by a
15 competent declaration affirming that the movant has complied with the meet and confer
16 requirements imposed in the preceding paragraph. Failure by the Designating Party to make such a
17 motion including the required declaration within 21 days (or 14 days, if applicable) shall
18 automatically waive the confidentiality designation for each challenged designation. In addition, the
19 Challenging Party may file a motion challenging a confidentiality designation at any time if there is
20 good cause for doing so, including a challenge to the designation of a deposition transcript or any
21 portions thereof. Any motion brought pursuant to this provision must be accompanied by a
22 competent declaration affirming that the movant has complied with the meet and confer
23 requirements imposed by the preceding paragraph.

24 The burden of persuasion in any such challenge proceeding shall be on the Designating
25 Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose
26 unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions.
27 Unless the Designating Party has waived the confidentiality designation by failing to file a motion to
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1 retain confidentiality as described above, all parties shall continue to afford the material in question
2 the level of protection to which it is entitled under the Producing Party’s designation until the court
3 rules on the challenge.

4 7. ACCESS TO AND USE OF PROTECTED MATERIAL

5 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
6 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
7 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
8 the categories of persons and under the conditions described in this Order. When the litigation has
9 been terminated, a Receiving Party must comply with the provisions of section 12 below (FINAL
10 DISPOSITION).

11 Protected Material must be stored and maintained by a Receiving Party at a location and in a
12 secure manner that ensures that access is limited to the persons authorized under this Order.

13 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by
14 the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
15 information or items designated “CONFIDENTIAL” only to:

16 (a) the Receiving Party’s Counsel in this action (and to the Receiving Party, where
17 the CONFIDENTIAL information is received by the Receiving Party’s Counsel);

18 (b) the officers, directors, and employees of the Receiving Party to whom disclosure
19 is reasonably necessary for this litigation and who have signed the “Acknowledgment and
20 Agreement to Be Bound” (Exhibit A);

21 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
22 reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement
23 to Be Bound” (Exhibit A);

24 (d) the court and its personnel;

25 (e) court reporters and their staff, professional jury or trial consultants, mock jurors,
26 and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who
27 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);
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1 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
2 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),
3 **unless otherwise agreed by the Designating Party or ordered by the court.** Pages of transcribed
4 deposition testimony or exhibits to depositions that reveal Protected Material must be separately
5 bound by the court reporter and may not be disclosed to anyone except as permitted under this
6 Stipulated Protective Order.

7 (g) the author or recipient of a document containing the information or a custodian or
8 other person who otherwise possessed or knew the information.

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10 8. **PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER**
LITIGATION

11 If a Party is served with a subpoena or a court order issued in other litigation that compels
12 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that Party
13 must:

14 (a) promptly notify in writing the Designating Party. Such notification shall include a
15 copy of the subpoena or court order;

16 (b) promptly notify in writing the party who caused the subpoena or order to issue in
17 the other litigation that some or all of the material covered by the subpoena or order is subject to this
18 Stipulated Protective Order. Such notification shall include a copy of this Stipulated Protective
19 Order; and

20 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
21 Designating Party whose Protected Material may be affected.

22 If the Designating Party timely seeks a protective order, the Party served with the subpoena
23 or court order shall not produce any information designated in this action as “CONFIDENTIAL”
24 before a determination by the court from which the subpoena or order issued, unless the Party has
25 obtained the Designating Party’s permission. The Designating Party shall bear the burden and
26 expense of seeking protection in that court of its confidential material – and nothing in these
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1 provisions should be construed as authorizing or encouraging a Receiving Party in this action to
2 disobey a lawful directive from another court.

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4 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

5 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
6 Material to any person or in any circumstance not authorized under this Stipulated Protective Order,
7 the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized
8 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c)
9 inform the person or persons to whom unauthorized disclosures were made of all the terms of this
10 Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to
11 Be Bound” that is attached hereto as Exhibit A.

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13 10. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

14 When a Producing Party gives notice to Receiving Parties that certain inadvertently produced
15 material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties
16 are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to
17 modify whatever procedure may be established in an e-discovery order that provides for production
18 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
19 parties reach an agreement on the effect of disclosure of a communication or information covered by
20 the attorney-client privilege or work product protection, the parties may incorporate their agreement
21 in the stipulated protective order submitted to the court.

22 11. MISCELLANEOUS

23 11.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek
24 its modification by the court in the future.

25 11.2 Right to Assert Other Objections. By stipulating to the entry of this Stipulated
26 Protective Order no Party waives any right it otherwise would have to object to disclosing or
27 producing any information or item on any ground not addressed in this Stipulated Protective Order.
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1 Similarly, no Party waives any right to object on any ground to use in evidence of any of the material
2 covered by this Stipulated Protective Order.

3 11.3 Filing Protected Material. Without written permission from the Designating Party or a
4 court order secured after appropriate notice to all interested persons, a Party may not file in the
5 public record in this action any Protected Material. A Party that seeks to file under seal any Protected
6 Material must comply with Civil Local Rules 141 and 14.1 and General Order 164. Protected
7 Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific
8 Protected Material at issue.

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10 **12. FINAL DISPOSITION**

11 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
12 Receiving Party must return all Protected Material to the Producing Party or destroy such material.
13 As used in this subdivision, “all Protected Material” includes all copies, abstracts, compilations,
14 summaries, and any other format reproducing or capturing any of the Protected Material. Whether
15 the Protected Material is returned or destroyed, the Receiving Party must submit a written
16 certification to the Producing Party (and, if not the same person or entity, to the Designating Party)
17 by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material
18 that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies,
19 abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected
20 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
21 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
22 correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant
23 and expert work product, even if such materials contain Protected Material. Any such archival copies
24 that contain or constitute Protected Material remain subject to this Stipulated Protective Order as set
25 forth in Section 4 (DURATION).

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27 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
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DATED: 11/9/2017

/s/ JILL TELFER
Attorneys for Plaintiff Glenn Blackman

DATED: 11/13/2017

/s/ AMY HIRSH
Attorneys for Defendant AutoZone, Inc.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: November 14, 2017

/s/ JOHN A. MENDEZ
UNITED STATES DISTRICT COURT JUDGE

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of perjury that I have read in
its entirety and understand the Stipulated Protective Order that was issued by the United States
District Court for the Eastern District of California on [date] in the case of *Glenn Blackman v.*
AutoZone, Inc., Case No. 2:17-CV-00659-JAM-DB. I agree to comply with and to be bound by all
the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so
comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise
that I will not disclose in any manner any information or item that is subject to this Stipulated
Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Eastern District of California for the purpose of enforcing the terms of this Stipulated Protective
Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
_____ [print or type full address and telephone number] as
my California agent for service of process in connection with this action or any proceedings related
to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____
[printed name]

Signature: _____
[signature]