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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

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EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION,

) No. CV 06-926-PHX-SMM

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) **ORDER**

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Plaintiff,

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v.

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AUTOZONE, INC., a Nevada  
corporation,

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Defendant.

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The Court held a jury trial in this case from June 2, 2009 to June 10, 2009. On June 10, 2009, the jury found in favor of Plaintiff Equal Employment Opportunity Commission (“Plaintiff”) on its hostile work environment claim against Defendant Autozone, Inc. (“Defendant”). However, the jury found against Plaintiff and in favor of Defendant on the retaliation claim. The jury awarded Plaintiff \$15,000 in compensatory damages and \$50,000 in punitive damages, for a total award of \$65,000. In awarding damages to Plaintiff, the jury found that Defendant had failed to prove its affirmative defense to the hostile work environment claim as well as to punitive damages.

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Before the Court is Defendant’s Renewed Motion for Judgment as a Matter of Law, or Alternatively, Motion for New Trial, filed on June 22, 2009 (Doc. 230). Plaintiff responded <sup>1</sup> on July 9, 2009 (Doc. 235), and Defendant replied on July 15,2009 (Doc. 237).

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<sup>1</sup>Defendant claims that Plaintiff’s response was untimely, and thus, its motion is uncontested. Plaintiff had ten (10) days from the date of service of Defendant’s motion within which to file its response. The date that the motion was served is excluded from this

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1 The matter is now fully briefed and ready for decision. For the reasons set forth below, the  
2 Court will deny Defendant's motion.

### 3 **BACKGROUND**

4 Plaintiff represented Stacy Wing, an employee at Autozone Store 2737 in Mesa,  
5 Arizona. At the time that Ms. Wing was hired in 2003, Jose Contreras was the manager of  
6 store 2737. Plaintiff claimed that shortly after Ms. Wing began working, she was subjected  
7 to continual verbal and physical sexual harassment by Mr. Contreras. Plaintiff brought this  
8 Title VII discrimination case against Defendant alleging hostile work environment and  
9 retaliation. Plaintiff claimed that Defendant subjected Ms. Wing to unlawful sexual  
10 harassment that created a hostile work environment. Additionally, Plaintiff claimed that  
11 Defendant retaliated against Ms. Wing for reporting the sexual harassment, or for  
12 participating in the investigation of the harassment after another employee complained about  
13 it. This retaliation consisted of withdrawing Ms. Wing's promotion to the position of Parts  
14 Sales Manager. Pursuant to Title VII, Plaintiff sought the following remedies: (1) back pay;  
15 (2) pecuniary and nonpecuniary compensatory damages; (3) punitive damages; and (4) non-  
16 monetary relief, including injunction, posting of notice, training, and revision of policies.<sup>2</sup>

17 Defendant denied both of these claims. Defendant affirmatively alleged that it  
18 exercised reasonable care to prevent and promptly correct the sexually harassing behavior,  
19 and that Ms. Wing unreasonably failed to take advantage of any preventive or corrective

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21 period. See Fed. R. Civ. P. 6(a)(1). When a period is less than eleven (11) days,  
22 intermediate Saturdays, Sundays, and legal holidays are excluded from this period. Fed. R.  
23 Civ. P. 6(a)(2). Furthermore, an additional three (3) days are added after the period would  
24 otherwise expire. Fed. R. Civ. P. 6(d). Defendant's motion was served on June 22, 2009.  
25 Therefore, Plaintiff's response was due on July 10, 2009. As it was filed on July 9, 2009, the  
26 Court finds that the response was timely filed, and it will consider the arguments presented  
27 therein.

28 <sup>2</sup>As the jury found against Plaintiff on its retaliation claim, back pay was not available.  
Plaintiff has filed a separate motion for equitable relief, which will be addressed by the Court  
in a subsequent Order.

1 opportunities provided by Defendant or otherwise failed to avoid harm. Defendant also  
2 affirmatively alleged that the actions of Mr. Contreras were contrary to Defendant's good  
3 faith efforts to comply with Title VII, and thus, no punitive damages should be awarded.

#### 4 DISCUSSION

5 Defendant renews its motion for judgment as a matter of law on the hostile work  
6 environment claim and punitive damages (Doc. 230). Defendant argues that Plaintiff failed  
7 to prove that Defendant did not exercise reasonable care to prevent and promptly correct the  
8 sexually harassing behavior and that Ms. Wing took advantage of these preventive or  
9 corrective opportunities or otherwise failed to avoid harm. (*Id.* at 2-13.) Defendant also  
10 argues that Plaintiff failed to prove that Defendant did not make good faith efforts to comply  
11 with Title VII, and thus, it should not be liable for punitive damages. (*Id.* at 13-16.)

#### 12 I. Renewed Motion for Judgment as a Matter of Law

13 "Judgment as a matter of law is appropriate when the evidence, construed in the light  
14 most favorable to the nonmoving party, permits only one reasonable conclusion, which is  
15 contrary to the jury's verdict." *Omega Envtl., Inc. v. Gilbarco, Inc.*, 127 F.3d 1157, 1161  
16 (9th Cir. 1997); see also *White v. Ford Motor Co.*, 312 F.3d 998, 1010 (9th Cir. 2002). Thus,  
17 judgment as a matter of law may be granted "[i]f a party has been fully heard on an issue  
18 during a jury trial and the court finds that a reasonable jury would not have a legally  
19 sufficient evidentiary basis to find for the party on that issue . . ." Fed. R. Civ. P. 50(a)(1);  
20 *Juhnke v. EIG Corp.*, 444 F.2d 1323, 1325 (9th Cir. 1971) (noting that directed verdict and  
21 motion for judgment notwithstanding the verdict "are measured by the same standards as the  
22 latter is merely a renewal of the former").

23 In considering a Rule 50(b) motion, "the court must draw all reasonable inferences  
24 in favor of the nonmoving party, and it may not make credibility determinations or weigh the  
25 evidence." *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150 (2000). However,  
26 because the Court reviews the Record as a whole, the Court "should give credence to the  
27 evidence favoring the nonmovant as well as that evidence supporting the moving party that  
28 is uncontested and unimpeached, at least to the extent that that evidence comes from

1 disinterested witnesses.” Id. at 151 (citation and internal quotation marks omitted).  
2 Therefore, the Court’s role is not to substitute its view of the evidence for that of the jury.  
3 Winarto v. Toshiba Am. Elecs. Components, 274 F.3d 1276, 1283 (9th Cir. 2001). When  
4 two possible sets of inferences are supported by the record, “the inferences that support the  
5 jury’s verdict of course win the day.” Id. at 1287.

6 A. Affirmative Defense to Hostile Work Environment

7 1. Employer Exercised Reasonable Care to Prevent and Correct Promptly  
8 Sexually Harassing Behavior

9 “[A]n employer is subject to vicarious liability to a victimized employee for an  
10 actionable hostile environment created by a supervisor with immediate (or successively  
11 higher) authority over the employee.” Faragher v. City of Boca Raton, 524 U.S. 775, 807  
12 (1998); Burlington Indus., Inc. v. Ellerth, 524 U.S. 742, 765 (1998). However, the U.S.  
13 Supreme Court provides a defense against vicarious liability:

14 “[A] defending employer may raise an affirmative defense to liability or  
15 damages, subject to proof by a preponderance of the evidence. . . . The defense  
16 comprises two necessary elements: (a) that the employer exercised reasonable  
17 care to prevent and correct promptly any sexually harassing behavior, and  
18 (b) that the plaintiff employee unreasonably failed to take advantage of any  
19 preventive or corrective opportunities provided by the employer or to avoid  
20 harm otherwise . . . . No affirmative defense is available, however, when the  
21 supervisor's harassment culminates in a tangible employment action.”

22 Faragher, 524 U.S. at 807-808; Ellerth, 524 U.S. at 765.

23 The affirmative defense to Plaintiff’s hostile work environment claim relied heavily  
24 on the facts. While Defendant had an anti-harassment policy in effect, Plaintiff presented  
25 evidence that the policy was not always effectively implemented. For example, Conteras’  
26 personnel file did not contain a handbook acknowledgment form or evidence that he was  
27 trained on sexual harassment. Ms. Wing’s personnel file had a handbook acknowledgment  
28 signed in March 2004, approximately a year after she started working for Defendant.

29 Additionally, as to corrective action, the evidence presented by the parties as to the  
30 investigation undertaken by Defendant in response to Ms. Wing’s harassment complaints was  
31 highly contested. Ms. Wing and Defendant’s Regional Human Resources Manager, Scott  
32 Anderson, testified to very different accounts of the June 2003 and December 2003

1 investigations. This case ultimately came down to a classic “he said-she said” scenario.  
2 While the credibility of Ms. Wing and Mr. Anderson lay at the heart of the case, the Court  
3 does not take credibility into account. When considering Defendant’s Rule 50 motion, the  
4 Court must view the evidence in the light most favorable to Plaintiff and draw all reasonable  
5 inferences in its favor.

6 First, the evidence was disputed as to how many employees other than Ms. Wing, if  
7 any, Mr. Anderson interviewed during his June 2003 investigation. Two of the alleged  
8 witnesses, Luz Hernandez and Hector Barajas, testified that they did not remember being  
9 interviewed by Mr. Anderson. Another witness, Steve Corbeil, testified that he never worked  
10 with Mr. Contreras and never met Mr. Anderson. Second, Ms. Wing disputed Mr.  
11 Anderson’s claim that she was given the option to transfer to another store following her  
12 harassment complaint in June 2003. Third, Ms. Wing testified that Mr. Anderson failed to  
13 return her phone calls when she tried to report continuing harassment after the June 2003  
14 investigation. Finally, the parties stipulated that certain evidence was lost by Defendant,  
15 including investigative files, witness statements, and the videotape of the December 2003  
16 incident of harassment.

17 Based on the evidence and testimony presented at trial, the Court cannot conclude  
18 “that a reasonable jury would not have a legally sufficient evidentiary basis” for finding that  
19 Defendant had not proved this first prong of its affirmative defense. See Fed. R. Civ. P.  
20 50(a)(1).

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22 2. Employee Unreasonably Failed to Take Advantage of Any Preventive  
or Corrective Opportunities or Avoid Harm

23 The second prong of the affirmative defense also was heavily fact-driven. It was  
24 undisputed at trial that Ms. Wing complained about sexual harassment to three individuals:  
25 store manager Mr. Contreras, District Manager Jim Monti, and Regional Human Resources  
26 Manager, Mr. Anderson. These three individuals were identified in Defendant’s policy as  
27 appropriate contacts for a sexual harassment complaint. Also, Ms. Wing testified that she  
28 attempted to contact Mr. Anderson on three occasions after her initial June 2003 complaint

1 regarding continuing harassment. However, Ms. Wing contended that Mr. Anderson never  
2 returned her phone calls. Mr. Anderson, for his part, disputed that he received any phone  
3 calls or messages from Ms. Wing after his June 2003 investigation. The jury could have  
4 credited Ms. Wing's testimony over Mr. Anderson's and found that Ms. Wing tried to take  
5 advantage of Defendant's sexual harassment complaint procedures.

6 The Court cannot find "that a reasonable jury would not have a legally sufficient  
7 evidentiary basis" for finding that Defendant had not proved its affirmative defense to the  
8 hostile work environment claim. See Fed. R. Civ. P. 50(a)(1); Juhnke, 444 F.2d at 1325.  
9 Because conflicting inferences could have been drawn from the facts, the affirmative defense  
10 properly went to the jury.

11 B. Affirmative Defense to Punitive Damages

12 Pursuant to Rule 50(b) of the Federal Rules of Civil Procedure, Defendant asks the  
13 Court to grant judgment in its favor as to punitive damages. To award punitive damages,  
14 Plaintiff must prove two elements: (1) Defendant acted with knowledge that its actions may  
15 have violated federal law and (2) employee who discriminated against Ms. Wing were  
16 managerial agents acting within the scope of their employment. Kolstad v. Am. Dental  
17 Assoc., 527 U.S. 526, 535-36 (1999). However, "an employer may not be vicariously liable  
18 for the discriminatory employment decisions of managerial agents where these decisions are  
19 contrary to the employer's good faith efforts to comply with Title VII." Id. at 545.

20 Defendant first argues that the evidence presented at trial was insufficient that a  
21 "managerial agent" acted within the scope of his employment while committing the alleged  
22 discriminatory acts. (Doc. 230, 14:9-13.)

23 Defendant made a Rule 50(a) motion at the close of the evidence. Although  
24 Defendant asked the Court to enter judgment as a matter of law on punitive damages,  
25 Defendant did not argue that Plaintiff failed to present legally sufficient evidence that Mr.  
26 Contreras and Mr. Anderson were managerial agents acting within the scope of their  
27 employment. (Tr. 602-604, 743.) The bases for Defendant's motion were that Plaintiff had  
28 failed to present legally sufficient evidence that Mr. Contreras and Mr. Anderson acted with

1 malice or reckless indifference and that their decisions were not contrary to Defendant's good  
2 faith efforts to comply with Title VII. (Id.) "A party cannot raise arguments in its post-trial  
3 motion for judgment as a matter of law under Rule 50(b) that it did not raise in its pre-verdict  
4 Rule 50(a) motion." Freund v. Nycomed Amersham, 347 F.3d 752, 761 (9th Cir. 2003).  
5 Because Defendant failed to argue that Plaintiff had presented insufficient evidence that a  
6 managerial agent acted within the scope of his employment when committing the  
7 discriminatory acts, Defendant may not make that argument now. Id.

8 Defendant next argues that it cannot be liable if it can prove it engaged in good faith  
9 efforts to comply with Title VII and the individual who discriminated against Ms. Wing acted  
10 in a manner contrary to Defendant's good-faith efforts. (Doc. 230, 14:14-16:2.) However,  
11 there was a legally sufficient evidentiary basis for a jury to find against Defendant on its  
12 punitive damages affirmative defense. A jury could have concluded that Defendant's failure  
13 to maintain critical evidence, including the investigative files and surveillance video, did not  
14 demonstrate a good faith effort to comply with Title VII. Similarly, the jury could have  
15 concluded that Mr. Anderson's failure to properly investigate Ms. Wing's complaint and  
16 return her phone calls also demonstrated a lack of good faith by Defendant.

## 17 **II. Motion for New Trial**

18 Alternatively, Defendant asks the Court to grant a new trial under Rule 59(a) on  
19 Plaintiff's hostile work environment claim and punitive damages. (Id. at 2 n.1.)

20 Under Rule 59(a) of the Federal Rules of Civil Procedure, the court may grant a new  
21 trial "after a jury trial, for any reason for which a new trial has heretofore been granted . . ."  
22 Fed. R. Civ. P. 59(a)(1)(A). As "Rule 59 does not specify the grounds on which a motion  
23 for a new trial may be granted," the court is bound by historically recognized grounds.  
24 Zhang v. Am. Gem Seafoods, Inc., 339 F.3d 1020, 1035 (9th Cir. 2003). These grounds  
25 include "that the verdict is against the weight of the evidence, that the damages are excessive,  
26 or that, for other reasons, the trial was not fair to the party moving." Molski v. M.J. Cable,  
27 Inc., 481 F.3d 724, 729 (9th Cir. 2007) (quoting Montgomery Ward & Co. v. Duncan, 311  
28 U.S. 243, 251 (1940)); Passantino v. Johnson & Johnson Consumer Prods., 212 F.3d 493,



1 510 n.15 (9th Cir. 2000) (“The trial court may grant a new trial only if the verdict is contrary  
2 to the clear weight of the evidence, is based upon false or prejudicial evidence, or to prevent  
3 a miscarriage of justice.”); see also Union Oil Co. v. Terrible Herbst, Inc., 331 F.3d 735, 742  
4 (9th Cir. 2003).

5 While the court may weigh the evidence and assess the credibility of witnesses, it may  
6 not grant a new trial “merely because it might have come to a different result from that  
7 reached by a jury.” Roy v. Volkswagen of America, Inc., 896 F.2d 1174, 1176 (9th Cir.  
8 1990) (citation omitted); see also Union Oil Co., 331 F.3d at 743 (“It is not the courts’ place  
9 to substitute our evaluations for those of the jurors.”). Although the court does not approve  
10 of miscarriages of justice, “a decent respect for the collective wisdom of the jury, and for the  
11 function entrusted to it in our system, certainly suggests that in most cases the judge should  
12 accept the findings of the jury, regardless of his own doubts in the matter.” Landes Const.  
13 Co., Inc. v. Royal Bank of Canada, 833 F.2d 1365, 1371 (9th Cir. 1987) (citations omitted).

14 Having considered all the evidence presented at trial, the Court does not conclude  
15 that a new trial is warranted. As to the hostile work environment claim, the undisputed  
16 evidence presented at trial showed that Ms. Wing was subjected to sexual harassment by Mr.  
17 Contreras when he grabbed Ms. Wing’s head and forced it towards his crotch. The evidence  
18 also suggested that while Defendant had a sexual harassment policy, it was not effectively  
19 implemented in every instance. Witnesses’ testimony also suggested that Mr. Anderson’s  
20 investigations of Ms. Wing’s sexual harassment complaints lacked thoroughness. Mr.  
21 Anderson testified that he interviewed five employees in an attempt to corroborate Ms.  
22 Wing’s complaint. However, several of the employees supposedly interviewed by Mr.  
23 Anderson testified that they had not spoken with him. Furthermore, the parties stipulated that  
24 certain evidence was lost by Defendant, including investigative files, witness statements, and  
25 the videotape of the December 2003 incident of harassment. From this and other evidence,  
26 the jury could have concluded that Defendant created a hostile work environment and that  
27 Defendant did not prove its affirmative defense.

28 Likewise, as to punitive damages, the Court concludes that a new trial is not warranted.



1 Testimony at trial indicated that Mr. Contreras sexually harassed Ms. Wing on at least one  
2 occasion after which he gazed into the security camera and laughed. For his part, Mr.  
3 Anderson failed to thoroughly investigate Ms. Wing's allegations and to return her phone  
4 calls. Furthermore, Defendant stipulated that it failed to maintain important evidence in the  
5 case, further negating its argument that it engaged in good-faith efforts to comply with Title  
6 VII.

7 The issue is not whether the Court would have reached the same conclusion as the  
8 jury, but whether the Court is left with a definite and firm conviction that a mistake has been  
9 committed. Mindful of the respect that must be afforded the collective wisdom of the jury,  
10 the Court does not conclude that such a mistake occurred in this case.

11 Accordingly,

12 **IT IS HEREBY ORDERED DENYING** Defendant's Renewed Motion for  
13 Judgment as a Matter of Law, or Alternatively, Motion for New Trial (Doc. 230).

14 DATED this 24<sup>th</sup> day of July, 2009.

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19 Stephen M. McNamee  
20 United States District Judge  
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