

# Daily Journal

FEBRUARY 15, 2023



## TOP VERDICTS

THE LARGEST AND MOST SIGNIFICANT VERDICTS AND APPELLATE REVERSALS IN CALIFORNIA IN 2022.

### Ortiz v. Amazon.com

For the defense, the task looked daunting: a nationwide collective action, a statewide class action and PAGA representative actions brought by Amazon.com managers alleging they were misclassified as exempt employees owed unpaid overtime and penalties.

Such cases usually settle. Yet a Gibson, Dunn & Crutcher LLP team achieved a complete defense victory at the class certification stage, at summary judgment on the plaintiff's individual claims and at a bench trial over the plaintiff's standing to represent others under PAGA. *Ortiz v. Amazon.com LLC et al.*, 4:17-cv-03820 (N.D. Cal., filed July 5, 2017).

"It was a big case and a pretty great result," said Gibson Dunn partner Megan Cooney, who served as co-lead counsel alongside Jason C. Schwartz and Bradley J. Hamburger. "It shows there's a path to litigating these cases and

coming out the other side without having to settle."

Plaintiff lawyer Scott Edward Cole of Cole & Van Note declined to comment.

Plaintiff Michael Ortiz, an Amazon.com shift manager, filed the lawsuit under the FLSA, the California Labor Code and PAGA, asserting that he and other managers were actually regular workers sorting packages on the shipping line. Cooney, Schwartz, Hamburger and their team obtained summary judgment on the FLSA claims and denial of class certification. The court then tried Ortiz's individual claims.

"Our focus was on undermining his credibility," Hamburger said. "Jason Schwartz's cross-examination got him to tell his story of working on the line, but then his résumé emphasized how he supervised other employees and developed operational changes to improve efficiency."



BRADLEY J. HAMBURGER



MEGAN COONEY



JASON C. SCHWARTZ



JOSEPH R. ROSE

#### Case Details

CASE NAME	Ortiz v. Amazon.com
TYPE OF CASE	Wage and hour claims
COURT	Northern District
JUDGE(S)	Judge Jeffrey S. White
DEFENSE LAWYERS	Gibson, Dunn & Crutcher LLP, Jason C. Schwartz, Bradley J. Hamburger, Megan Cooney, Joseph R. Rose, Jessica M. Pearigen, Jordan E. Johnson, Nick Thomas
PLAINTIFFS' LAWYERS	Cole & Van Note, Scott E. Cole, Laura G. Van Note

It was a high-risk strategy. “If he won, he could proceed to a PAGA claim that would extend to all of Amazon’s managers,” Hamburger said.

“From the outset, we took it step-by-step to get the case narrowed down,” Cooney said. The Gibson Dunn team built on the record they’d developed of individualized issues to defeat class certification,

then moved to strike the PAGA claim as unmanageable and suffering the same defects as the potential class claims.

Following the five-day trial, Judge Jeffrey S. White concluded that the plaintiff was properly classified as exempt and clarified how to reasonably assess the requirement that the employee spends more than 50% of his time

on exempt duties in each workweek.

“Amazon runs a complex logistical operation,” Hamburger said. “The idea that the plaintiff and the others were managers in name only was just not right. We showed that Amazon’s job classifications are valid.”

Added Gibson Dunn partner

Jason C. Schwartz: “This was a terrific team effort, including a last-minute shift from Zoom to an in-person trial. We were thrilled to achieve this victory for Amazon after narrowing the trial to the plaintiff’s individual claims and standing under PAGA.”

---

— JOHN ROEMER