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# Ex-Amazon Manager Kicks Off California OT Bench Trial

By **Hannah Albarazi**

Law360, Oakland, Calif. (June 21, 2021, 8:42 PM EDT) -- Attorneys for a former Amazon manager in California delivered opening statements Monday in a bench trial over claims that the retail giant shorted him overtime, arguing that the bulk of his work was not managerial, while Amazon said its ex-employee was disgruntled and vengeful as a result of his firing.

During opening statements in U.S. District Court for the Northern District of California, counsel for former Amazon.com LLC warehouse shift manager Michael Anthony Ortiz — who sued the retail behemoth in 2017, claiming that it misclassified him as a manager — told Judge Jeffrey S. White that while Amazon gave Ortiz the title of manager, it relegated him to manual labor for most of his shifts and failed to provide him with meal and rest breaks, in violation of California labor laws.

One of Ortiz's attorneys, Laura Van Note of Scott Cole & Associates APC, told the judge that Ortiz performed physical labor to increase the speed of his team and spent little time doing tasks that required independent judgment.

But Jason C. Schwartz of Gibson Dunn & Crutcher LLP, Amazon's attorney, fired back, telling the judge during opening statements that Amazon terminated Ortiz after he committed a safety violation and asked "his associates and supervisor 'to do him a solid' and lie about it. This is what motivates Mr. Ortiz, today, to change his tune about Amazon."

Schwartz tore into Ortiz's claim that he had to do the same tasks as the associates to meet his superiors' target metrics, repeatedly asking Ortiz, who took the stand Monday, whether he was a "superhuman" processor of packages and suggesting that the real reason Ortiz met the goals of his superiors was that he successfully implemented system efficiencies.

But Ortiz testified that he believed that he had to perform manual labor to clear the workload at the warehouses, didn't spend much time optimizing the warehouse, regularly worked more than 40 hours per week without overtime pay, and almost never took breaks.

Ortiz testified that he felt as if Amazon had "taken advantage of" him.

Ortiz filed his putative class action in 2017, claiming that while he managed a team of 80 to 100 employees as a shift manager, he spent the bulk of his time replacing batteries, moving pallets and boxes — performing the same tasks as the associates working underneath him.

In 2019, Judge White **trimmed the suit**, rejecting claims alleging violations of the Fair Labor Standards Act, while allowing Ortiz's state law claims to proceed.

Judge White **denied Ortiz's bid for class certification** in April 2020, saying Ortiz hadn't convinced the court that common issues predominated over individual issues or that litigating their issues as a group was a superior way of resolving the claims.

On Monday, Amazon's counsel, Schwartz, told Judge White that even when Ortiz was performing manual labor, he was doing so while managing associates and looking for ways to improve workflow.

"Mr. Ortiz's current story, as you'll see as the evidence comes in, is just not credible," Schwartz said.

"If we were hiring Mr. Ortiz just to be a faster package sorter, there's no way we would have required a college degree, which he had from UC Berkeley; would not have paid him almost \$70,000 a year in 2016; would not have given him over \$13,000 in a signing bonus," Schwartz said.

On cross-examination, Ortiz said he was accountable for safety at the warehouse and for the volume of packages sorted overnight, and was often the senior-most manager on his shift. Ortiz also said he sometimes took meal breaks with associates or would go pick up lunch during his shift.

Schwartz drew the judge's attention to Ortiz's résumé following his 10 months of employment at Amazon in 2016, in which he boasts of his managerial and system efficiency accomplishments there. Ortiz acknowledged that he had made a few things more efficient at the Amazon warehouses and that he did emphasize his managerial accomplishments in his résumé, but said most of his time was spent doing physical labor.

Van Note told Law360 on Monday that her client worked excessive hours and that Amazon denied him overtime and other benefits of non-exempt employment.

"Ortiz's trial testimony today was hard-hitting, persuasive and revealed a flawed system at the company toward worker treatment. This trial is calculated to expose this practice for him as well as other Amazon managers, and we're thrilled to see it to conclusion," Van Note said.

The bench trial is scheduled to resume Wednesday morning.

Representatives and counsel for Amazon did not immediately respond to requests for comment Monday.

Ortiz is represented by Scott Edward Cole and Laura Van Note of Scott Cole & Associates APC.

Amazon is represented by Michele L. Maryott, Megan Cooney, Jason C. Schwartz and Katherine V. A. Smith of Gibson Dunn & Crutcher LLP.

The case is Ortiz v. Amazon.com LLC et al., case number 4:17-cv-03820, in the U.S. District Court for the Northern District of California.

--Editing by Karin Roberts.