

Best Buy Asst. Managers Denied Class Cert. In OT Suit

By **Jonathan Randles**

Law360, Los Angeles (November 21, 2011, 7:56 PM ET) -- A California federal judge on Monday refused to certify a class of Best Buy Stores LP assistant managers who claimed they were shortchanged overtime pay and denied meal and rest breaks after the electronics retailer misclassified them as exempt from state wage-and-hour laws.

U.S. District Judge Stephen V. Wilson didn't question attorneys or explain why he denied the assistant managers' class certification bid, but did say he would justify his decision in a written order before dismissing counsel.

The ruling is a major blow to lead plaintiff Damian Gover, who sought to represent current and former employees who worked as sales managers, inventory managers and operations managers at Best Buy — the nation's largest electronics retailer. The class would have included all assistant managers who worked at least one shift at for company since 2006.

Stanley D. Saltzman, an attorney representing Gover from Marlin & Saltzman LLP, said he was disappointed with the judge's decision, adding that it would be unlikely that the proposed class members would receive the wages they were allegedly due. Saltzman said he planned to appeal the court's decision.

Minnesota-based Best Buy could not immediately be reached for comment Monday.

Best Buy was sued in state court over its wage-and-hour policies in November 2010. The case was moved to federal court the following month. Gover held assistant manager positions while working at Best Buy stores in San Francisco and Goleta from from November 2007 to February 2010.

Assistant managers were scheduled to work 50 hours a week and often worked longer hours, the lawsuit said. The vast majority of the time assistant managers spent working at the store was on the sales floor performing hourly duties, according to the motion for class certification.

Further, Gover alleged that Best Buy implemented centralized policies and procedures that dictated assistant managers' work and that he was not allowed to regularly exercise independent judgment and discretion on significant matters.

Saltzman suggested that Gover's class certification bid may have been derailed by the U.S. Supreme Court's June ruling in Wal-Mart Stores Inc. v. Dukes., which tightened class certification standards. The high court's decision was handed down weeks after the motion for class certification was filed, Saltzman said.

Best Buy, which filed its motion opposing class certification, cited Dukes heavily. The company argued that the assistant managers had failed to provide common proof that would allow a classwide determination of how class members spent their time each week.

Gover is represented by Stanley Saltzman, Marcus Bradley, Christina Humphrey and Kiley Grombacher of Marlin & Saltzman LLP and Bruce Anticouni and Kristi Rothschild of Anticouni & Associates PC.

Best Buy is represented by Barbara Miller, George Stohner and Jennifer White-Sperling of Morgan Lewis & Bockius LLP.

The case is Damian Gover v. Best Buy Stores LP et al., case number 2:10-cv-09988, in the U.S. District Court for the Central District of California.

--Additional reporting by Erin Coe. Editing by Lindsay Naylor.

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