

## Class Action Against BJ's Wholesale Revived After Appellate Stumble

by Raychel Lean

A South Florida class action lawsuit accusing BJ's Wholesale Club Inc. of deceptive and unfair trade practices has bounced back from an appellate reversal with a trial court ruling granting class certification.

Miami-Dade Circuit Judge William Thomas expressed confidence in claims from named plaintiff Laura Bugliaro, whose 2015 complaint alleged the discount chain was charging members sale tax based on the original prices of products, instead of their discounted value.

The judge found class certification was "not only appropriate, but necessary." Thomas noted the plaintiffs are seeking injunctive relief only this time around.

Despite objections from BJ's that it doesn't have the



Plaintiffs lawyers Steve Silverman, left, Alan Kluger, right and Victor Diaz's of VM Diaz & Partners

ability to pinpoint its Florida-based members, Thomas found that its records reveal who bought what and where they got it. According to the ruling, BJ's still hasn't changed its taxation policies and "continues to act inconsistent with this court's interpretation" of governing statutes and regulations.

Bugliaro's attorneys, Kluger, Kaplan, Silverman, Katzen & Levine partners Alan Kluger and Steve Silverman and Victor M.

Diaz of VM Diaz & Partners estimate more than 700,000 members could have paid superfluous tax.

In one instance, Bugliario alleged she was charged \$98 in sales tax for a TV based on its original \$1,399.99 price, even though she only paid \$769.99. The complaint claimed that meant the defendant collected extra money that didn't have to go to the state.

BJ's Wholesale has denied any wrongdoing, and said

it gives all sales tax to the state.

Defense attorneys James Mckee, William E. Davis, Christina Kennedy and Kevin Reck of Foley & Lardner's Tallahassee, Miami and Orlando offices, and Brandon J. Williams of Holland & Knight in Miami did not immediately respond to a request for comment.

BJ's argued the expense and complexity of a class action was unnecessary, claiming the class was undefinable and the suit involved too many individual issues. It also claimed that complying with an injunction would mean creating new policies for all members—not just those living in Florida, as the lawsuit requests.

But Thomas disagreed, finding Bugliaro's claims applied to a whole group.

“BJ's argument misses the central purpose of a class action brought pursuant to FDUTPA [Florida Deceptive and Unfair Trade Practices Act], which is designed to protect the rights of the consuming public, not any individual consumer, through statutory remedies including injunctive relief,” the order said. “Additionally, engaging in this type of merit-based analysis is inappropriate at this stage where the court is determining the propriety of the class action itself.”

The Third District Court of Appeal reversed an earlier certification for the prospective injunctive relief in 2019, finding Bugliaro failed to exhaust her administrative remedies with the Department of Revenue, and that the plaintiffs' team

hadn't clearly defined who the class members were.

Kluger and Silverman called it an important ruling for consumers, as it will require the defendant to stop charging extra in taxes.

“I hope the Department of Revenue sees the positive impact this ruling has for Florida consumers, and will work with us to continue to benefit our class of Florida consumers and help us to put an end to BJ's practice of wrongfully collecting a what they wrongfully claim to be a purported sales tax in violation of Florida law,” they said via email.

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