

Kroger Guts Calif. Union Delivery Workers' OT Suit

By **Brandon Lowrey**

Law360, Los Angeles (December 23, 2014, 6:20 PM ET) -- A California judge on Tuesday dealt a heavy blow to Kroger Co. delivery workers who allege the grocery chain didn't pay them for all overtime hours they worked, striking their claims for overtime and other violations on grounds the claims are federally preempted because the workers are unionized.

"Although this doesn't in the literal sense dispose of the case, it looks like it puts it on a downward slide toward destruction," Judge William F. Highberger told the parties during a hearing in Los Angeles, rejecting the plaintiff's claims that the workers' collective bargaining agreement might not have been valid.

The ruling left intact claims for rest period violations and some unpaid wages, attorneys said.

The putative class filed suit against Kroger and several of its units in July. Kroger — along with its units Ralphs Grocery Co., Foods Co. and two Food 4 Less entities — allegedly stiffed more than 1,000 drivers, dispatchers and delivery-support staff on wages and overtime, requiring them to work extra hours but not paying them in full, according to the complaint.

The stores "routinely required plaintiffs to work more than eight hours per day and, in some instances, more than 12 hours per day, and more than 40 hours per workweek and, in some instances, seven days for extended, ongoing time periods," lead plaintiff Jesse Blanco said in the complaint.

Blanco also said the companies shaved wages by rounding time; "failed and refused to pay overtime"; and cheated the workers of meal and rest breaks required by California law.

Most of the allegations are being brought under the California Labor Code, but there are also breach-of-contract claims over the stores' alleged violation of a collective bargaining agreement struck with the Teamsters Locals 63 and 848, the plaintiffs said, and one claim under the California Business and Professions Code.

"It is our understanding that the policies at issue are companywide in California," said Julia Aparicio-Mercado, an attorney for the plaintiffs. "We hope Kroger will do the right thing and take care of their workers."

The putative class includes all hourly delivery drivers, dispatchers and support staff employed by the

stores in the four years leading up to the complaint. The plaintiffs are asking for a permanent injunction, compensatory damages and a variety of penalties.

The new suit is not Ralphs' first dispute with a class of workers making wage-and-hour claims. In October, the Ninth Circuit affirmed a district court ruling holding that Ralphs can't compel individual arbitration of a putative class action alleging it stiffed deli clerks on overtime and meal breaks, saying the arbitration policy "shocked the conscience."

The decision came after Ralphs urged the appeals court in August to compel arbitration, saying a trial judge had erred in finding the arbitration agreement the company required employees to sign was unconscionable under California contract law. The wage-and-hour action was filed by Zenia Chavarria, a former deli clerk at a Ralphs in Los Angeles County, who said in March 2011 that Ralphs failed to pay her and other nonexempt deli clerks all the wages due to them.

The Kroger Co. was founded in 1883 and now employs 375,000 people, according to the company's U.S. Securities and Exchange Commission annual report for 2013. About 300 collective bargaining agreements are in effect with various employee groups, the company says. It or its subsidiaries operate 2,640 grocery stores, 786 convenience stores and 320 fine jewelry stores. It also operates 38 manufacturing plants, "primarily bakeries and dairies."

On Tuesday, plaintiffs attorney Dennis P. Wilson told Law360 that a National Labor Relations Board investigation into the collective bargaining agreement is pending.

"We're not giving up on this case," Wilson said.

The plaintiff is represented by Julia Aparicio-Mercado of Aparicio-Mercado Law LC and Dennis Wilson of Law Offices of Dennis P. Wilson.

Kroger is represented by Timothy F. Ryan and Tritia M. Murata of Morrison & Foerster LLP.

The case is Jesse Blanco v. Ralphs Grocery Co. et al., case number BC-551385, in the Superior Court of the State of California, County of Los Angeles.

--Additional reporting by Cara Salvatore. Editing by Jeremy Barker.