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## Dollar Tree Managers Win Cert. In FLSA Overtime Suit

By **Django Gold**

Law360, New York (August 27, 2012, 1:30 PM ET) -- A group of Dollar Tree Stores Inc. managers may proceed together in a suit accusing their employer of depriving them of overtime pay and other wages, after a Colorado federal judge on Friday ruled they had presented substantial allegations the retail chain violated federal labor law.

U.S. District Judge Robert E. Blackburn granted conditional collective certification to a group of Dollar Tree assistant store managers who allege their employer violated the Fair Labor Standards Act by failing to pay them overtime wages and denying them meal breaks, saying that the plaintiffs had met the relatively lenient standard needed to proceed collectively.

"Looking solely to the allegations of the complaint and the plaintiff's affidavit, I find and conclude that plaintiff has satisfied the minimal burden necessary to the conditional certification of a collective action," Judge Blackburn said. "In the complaint, the plaintiff describes how the combined effect of certain Dollar Tree policies causes the FLSA violations she alleges."

"The plaintiff's allegations, if true, show that Dollar Tree ASMs are similarly situated," the judge said.

Dollar Tree, a Chesapeake, Va.-headquartered discount retail chain that sells items for \$1 or less, was sued in July 2011 by lead plaintiff Tanya Young, who alleged in her lawsuit that she and her employer's other ASMs were routinely subjected to scheduling demands that left them deprived of their federally mandated wages.

Young, who is paid by the hour, alleges in her lawsuit that Dollar Tree violates the FLSA by failing to pay overtime wages to ASMs who work in excess of 40 hours per week, saying that the company also refuses to allow these employees to take their mandated unpaid meal breaks for shifts of six or more hours.

These same employees were often precluded from taking their meal breaks due to the company's policy that at least two workers be on duty at all times, according to the complaint.

"Because ASMs were often scheduled with only one other employee on duty, ASMs were required to work through their 30-minute breaks on almost all scheduled shifts," Young alleges.

Young, a resident of Adams County, Colo., additionally alleges that her employer requires its Colorado-based ASMs to make bank drops after completing their shifts — and after clocking out for the day.

Young, who worked for Dollar Tree between 2005 and 2011, alleged in her lawsuit, "Such nationwide off-the-clock policy resulted directly from defendant's unrealistic mandated budget hours for each store, as dictated by defendant's high-level executives."

Though Dollar Tree argued that Young had not fully demonstrated that she and the members of the proposed class were in fact similarly situated, asking the court to apply a stricter standard to her certification motion, Judge Blackburn on Friday found that, with discovery as yet ongoing, it was not yet time to apply such an exacting standard.

"The defendant points to the plaintiff's deposition testimony and a variety of other evidence obtained in discovery to argue that, in reality, Dollar Tree ASMs are not similarly situated ... ultimately, that may prove to be true," the judge said. "However, discovery is not yet complete. Until discovery is complete, I conclude that it is premature to examine the evidence to determine, as a final matter, whether the plaintiff has shown that Dollar Tree ASMs are similarly situated."

The judge on Friday also denied Dollar Tree's motion to have the case transferred to its home district in Virginia federal court, finding that the factors presented in the Tenth Circuit's 1991 ruling in *Chrysler Credit Corp. v. Country Chrysler Inc.* precluded a venue transfer.

"Considering the circumstances of this case and the relevant factors outlined in [*Chrysler*], including the ninth factor — all other considerations of a practical nature that make a trial easy, expeditious and economical — I conclude that Dollar Tree's motion to transfer must be denied," the judge said.

When reached for comment on Monday, Dollar Tree attorney Kenneth M. Wilner of Paul Hastings LLP highlighted the Colorado court's decision to deny class certification to the plaintiffs, predicting that a similar fate ultimately awaited the collectively certified group.

"The company believes the FLSA collective action will ultimately be decertified once the court has the opportunity to evaluate the evidence at the more stringent stage," Wilner said.

A representative for the plaintiffs was not immediately available for comment.

The plaintiffs are represented by Andrew Ross Frisch, Carlos V. Leach and Angeli Murthy of Morgan & Morgan PA and Camar Ricardo Jones, Keith Michael Stern and Susan Hilary Stern of Shavitz Law Group PA.

Dollar Tree is represented by William Cory Barker, Barbara Berish Brown, Carson Hobbs Sullivan and Kenneth M. Wilner of Paul Hastings LLP, Beth Hirsch Berman of Williams Mullen, Steven W. Moore and Stacy D. Mueller of Ogletree Deakins Nash Smoak & Stewart PC and Matthew Peter Vandall of Littler Mendelson PC.

The case is *Young v. Dollar Tree Stores Inc.*, case number 1:11-cv-01840, in the U.S. District Court for the District of Colorado.

--Editing by Katherine Rautenberg.

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