

Process Servers Win Collective Certification In OT Suit

By **Daniela Porat**

Law360 (March 23, 2021, 8:50 PM EDT) -- A process server who sued for unpaid overtime was granted preliminary collective action certification Tuesday, after a New York federal judge found that he and his colleagues were subjected to the same pay practices.

U.S. Magistrate Judge Robert M. Levy said the question before him was simply whether named plaintiff Hector Ruiz was at the mercy of the same pay practices as other process servers who worked for Nationwide Court Services Inc.

Judge Levy said Ruiz had "met his minimal burden of showing that process servers were similarly situated with respect to their job requirements and pay provisions and were subject to a common policy or scheme," according to the order.

"In fact, defendants have admitted as much," the decision said.

The ruling stems from a proposed collective action filed against Nationwide Court Services and its president Arlene Nelson in November 2018. Nationwide Court Services serves legal papers on behalf of government agencies, including the New York City Mayor's Office, according to court filings.

Ruiz claimed the company violated the Fair Labor Standards Act and New York Labor Law by not paying workers overtime or providing correct wage statements and by firing Ruiz after he raised concerns about his wages, according to court filings.

Ruiz sought preliminary certification of a collective including all nonmanagerial Nationwide Court Services process workers who currently work for the company or did so in the three years before they opt to join the collective.

Ruiz and his fellow process servers were paid by a so-called "piece rate" basis for every process assignment they finished, according to court filings. Process servers were required to finish 93 assignments over two weeks.

Judge Levy zeroed in on whether the company's pay policies were uniform, ignoring Nationwide Court Services' allegations that Ruiz was a subpar worker.

Nationwide Court Services and its president "devote much of their opposition to describing [Ruiz] as unreliable and insubordinate, and they seek to hold him responsible for failing to meet his quota of serves," the judge wrote.

"However, as explained, the court does not consider or weigh factual disputes or make credibility determinations at this stage. I have therefore disregarded those allegations on this motion," the order said.

Judge Levy said that although the company opposed conditional certification, Nationwide Court Services did "agree with plaintiff as to the policy for paying process servers" and, in effect, conceded that the workers were subject to the same policies.

Members of the proposed collective "need not be identically situated to the named plaintiff or to each other," the judge wrote.

Ruiz presented testimony from Nelson and a human resources representative, as well as other records, to illustrate that Ruiz and his colleagues were all paid according to the piece rate system, no matter the hours worked, and therefore are all similarly situated.

As such, Ruiz surmounted the base threshold for conditional collective certification, the judge ruled.

In an emailed statement to Law360 on Tuesday, Rachel Demarest Gold, one of Nationwide Court Services' attorneys, said, "I respectfully disagree with the court's decision."

Gold pushed back on the notion that process servers should be paid for time between attempts to make service, which was not directly addressed by the judge at this stage in the litigation.

"Process server licensing laws require a certain number of attempts to serve be performed at different times of the day," Gold said. "Clients pay for the service by the piece. To assert that all the elapsed time between the two mandated attempts should be compensable is absurd and untenable for the industry."

Nationwide Court Services said Ruiz's collective certification request should be denied because he did not illustrate that the company had violated federal wage and hour laws, according to a brief filed in January.

"In addition to being in business for 25 years, having been through multiple audits, and being an expert in the industry, Ms. Nelson and her team have gone above and beyond in making certain that the way their employees are compensated is both fair and legal," the brief said.

Attorneys for Ruiz did not immediately respond to requests for comment.

Hector Ruiz is represented by David D. Barnhorn and Peter A. Romero of the Law Office of Peter A. Romero PLLC.

The defendants are represented by Rachel Demarest Gold and Justin Kelton of Abrams Fensterman Fensterman Eisman Formato Ferrara Wolf & Carone LLP.

The case is Ruiz v. Nationwide Court Services Inc. et al., case number 1:18-cv-06559, in U.S. District Court for the Eastern District of New York.

--Editing by Haylee Pearl.