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3 Chains Agree in Suit Over Janitors' Wages and Hours

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Three of the largest supermarket chains in California have reached a tentative \$22.4 million settlement in a class-action suit by immigrant janitors who said they often earned \$3.50 an hour and were never paid overtime, the two sides said yesterday.

The chains - Albertsons, Ralphs and Vons - tentatively settled the suit by 2,100 janitors, mostly from Mexico. Many said they worked 70 or more hours a week, often seven nights a week from 10 p.m. to 9 a.m.

The companies had originally said they should face no liability, pointing out that their cleaning contractors, and not the stores, employed the janitors. The companies tentatively agreed to the accord after a federal judge rejected their motion to dismiss the suit. They had said they were not joint employers along with the cleaning contractor.

Representatives of the janitors said Judge Percy Anderson of Federal District Court in Los Angeles had been expected to approve the settlement yesterday. But in a hearing, Judge Anderson said he was postponing approval, perhaps until Jan. 24, because Albertsons had not posted notices about the proposed settlement in its California stores to inform the cleaners.

When the suit began in 2000 on behalf of 600 janitors, Albertsons; Ralphs, part of Kroger; and Vons, part of Safeway, said they had little to do with the janitors, saying the workers were the responsibility of the contractor. The janitors also sued Encompass Services, the principal contractor, which has gone bankrupt.

Company officials declined to comment yesterday, saying they did not want to talk until a final settlement had been reached.

The janitors' advocates said the suit was important to help check a trend in which thousands of employers relied on contractors who often broke the law, while the major companies insisted that they knew nothing of the violations. "Many companies use contractors as a way of avoiding liability," the director of the U.C.L.A. Labor Center, Kent Wong, said. "It avoids paying comparable wages, paying health benefits and making long-term commitments to these employees."

Jesus Lopez, who worked for five years cleaning a Vons in the San Fernando Valley, said he earned \$250 a week even though he typically worked 70 hours, working out to \$3.57 an hour, far less than the \$5.15-an-hour federal minimum wage. Mr. Lopez said he was never paid time and a half when he worked more than 40 hours a week.

"I had only three days off in my whole five years there, and that was because I was very sick," Mr. Lopez, 29, an immigrant from Mexico, said. "I really couldn't do anything, because if I told my boss he was paying me too little, he would just fire me. It's hard to find another job, and I have to support my mother and younger brothers."

Like other janitors, Mr. Lopez said he was paid in cash, never had taxes withheld and was not given health insurance or vacation days. He said the contractor gave him orders about washing and waxing the floors, but Vons managers often ordered him to clean storage areas and remove empty cartons.

"I felt very bad about how little they paid me," he said. "One comes to this country with dreams, and when you see the reality of things, you see it's very different from what you expected."

The suit was originally brought by class-action lawyers along with the Mexican American Legal Defense and Educational Fund and the Service Employees International Union.

"When work gets contracted out and then subcontracted out again, standards for workers plummet, and that's when we see the illegal activity that led to this lawsuit," said Mike Garcia, president of the largest S.E.I.U. janitors' local in California. Under the accord, the janitors will receive \$10,000 each on average.

Wal-Mart, the nation's largest retailer, faces a similar suit in which hundreds of janitors who worked seven nights a week accuse it and its cleaning contractors of violating overtime laws. The janitors say Wal-Mart should be considered a joint employer. The company says it did not employ the cleaners.

"This lawsuit in California should strengthen the janitors' case against Wal-Mart, because it is clarifying the laws on who a joint employer is," Lilia Garcia, executive director of the Maintenance Cooperation Trust Fund, a monitoring group, said. "What happens is the supermarkets and the cleaners don't change from year to year. Only the contractors change. So it's clear who the real employer is."

Wal-Mart was embarrassed last year when federal agents raided 60 stores in 21 states and arrested 250 janitors, accusing them of being illegal immigrants.

Unlike the California suit, the Wal-Mart suit involves janitors from countries other than Mexico, including Brazil, the Czech Republic, Mongolia and Poland. The Mexican and Czech governments have filed briefs on behalf of the janitors. In August, the federal Labor Department and the State of California reached a \$1.9 million settlement with a contractor for Target after finding that the contractor had not paid overtime to hundreds of immigrant janitors who worked seven nights a week cleaning Target stores.