

# Cleaning Co. Agrees To Pay \$30M In 15-Year-Old Wage Dispute

By Irene Spezzamonte

Law360 (November 2, 2023, 6:32 PM EDT) -- An international cleaning company told a California federal court it has agreed to change some of its business practices and to shell out \$30 million to about 2,600 workers, hoping to end a 15-year-old suit alleging it misclassified workers as independent contractors.

The workers **asked** U.S. District Judge William Alsup on Wednesday for initial approval of the settlement they reached with Jan-Pro Franchising International Inc. It is the best resolution, they said, for the "extremely active and highly contested litigation" in the case, which started in 2008 in Massachusetts federal court and which currently faces several challenges.

"Thus, against this backdrop of uncertainty and likely delay, the parties finally reached a proposed settlement of this action that would ensure robust payments to settlement class members within the next few months," said the workers, who ran franchisees units for Jan-Pro.

The deal would include \$43,000 in claims administration costs, up to \$10 million to cover attorney fees and costs, \$25,000 to each of three named plaintiffs for their individual settlements and \$5,000 to each named plaintiff for class representative enhancements.

After those deductions, the settlement will be disbursed among the class members who are expected to receive an average payout of \$7,500 each if there is a 100% claim rate, or \$15,000 if there is a 50% claim rate. The workers said the 50% claim rate is more likely.

As part of the deal, starting in 2024, Jan-Pro "will endeavor to make it clearer to franchisees what amount they will actually net in monthly income from their franchise, after various deductions and expenses," in order to make sure workers understand how much they will cash in while working as franchisees, according to Wednesday's motion.

Starting in 2024, Jan-Pro will also "recommend the creation of an advisory council" that "will discuss and develop fairer pricing of cleaning accounts and will take up issues of concern to unit franchisees" and will make training modules available in Spanish, the workers said.

Three workers from California and one from Massachusetts filed their suit in 2008 claiming that Jan-Pro misclassified them as independent contractors instead of employees.

The court decided to look at the claims from the Massachusetts worker, but eventually ruled in 2014 that the worker was not Jan-Pro's employee. The case was therefore removed to California federal court in 2016, Wednesday's motion noted.

The case then took a trip to the Ninth Circuit in 2019, where a panel **asked** the California Supreme Court whether the ABC test the high court **introduced in its 2018 *Dynamex Operations West Inc. v. the Superior Court of Los Angeles County*** decision applied retroactively.

Under the test, a worker is considered an employee unless a company can demonstrate the worker is free from its control, performs work outside its line of business and operates as an independent firm.

In 2021, the state justices held that the state's ABC worker classification test **applied retroactively**.

Judge Alsup **certified a class** in August 2022 and awarded summary judgment to the workers on their claims for failure to pay minimum wage for mandatory trainings, failure to reimburse expenses for uniforms and cleaning supplies and equipment and unlawful deductions.

Also in August 2022, Judge Alsup granted an early win to the three named plaintiffs on their claim for unpaid minimum wage for travel between accounts and in favor of two of those plaintiffs for their failure to pay minimum wage for the time spent cleaning.

A jury trial on the damages was supposed to start Oct. 16, but the parties agreed to return to mediation, according to the motion for preliminary approval.

Shannon E. Liss-Riordan of Lichten & Liss-Riordan PC, who is representing the workers, told Law360 on Thursday that she is pleased the case has an end in sight.

"We have been down a long road in this case — 15 years of litigation and a trip to the Ninth Circuit and the California Supreme Court," Liss-Riordan said. "We are very pleased to have reached this resolution and look forward to our clients receiving their long-fought-for wages."

Representatives of Jan-Pro did not immediately respond to requests for comment Thursday.

The workers are represented by Shannon E. Liss-Riordan, Adelaide H. Pagano and Jane Farrell of Lichten & Liss-Riordan PC.

Jan-Pro is represented by Richard Howard Rahm and Lee E. Sheldon of Littler Mendelson, by Jeffrey M. Rosin of O'Hagan Meyer and by Norman M. Leon of DLA Piper LLP.

The case is Depianti et al. v. Jan-Pro Franchising International Inc., case number 3:16-cv-05961, in the U.S. District Court for the Northern District of California.

--Additional reporting by Abby Wargo. Editing by Nick Petruncio.