

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

<p>THOMAS E. PEREZ, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR,</p> <p style="text-align: center;">PLAINTIFF,</p> <p>v.</p> <p>JANI-KING OF OKLAHOMA, INC., a foreign corporation,</p> <p style="text-align: center;">DEFENDANT.</p>	<p>Civil Action No. CIV-16-1133-W</p> <p style="text-align: center;">COMPLAINT</p>
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A. INTRODUCTION

1. Plaintiff, Thomas E. Perez, Secretary, United States Department of Labor, brings this action under Section 17 of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §§ 201-219 (“FLSA” or “the Act”) to enjoin Defendant, Jani-King of Oklahoma, Inc. (“Defendant”), from violating the provisions of sections 11 and 15 of the FLSA, 29 U.S.C. §§ 211 and 215, and to require Defendant to make, keep, and preserve such records of the persons employed by Defendant and of the wages, hours, and other conditions and practices of employment maintained by Defendant.

2. Defendant advertises on its website that it has “provid[ed] janitorial services to customers in the Oklahoma City area since 1969” and satisfies the commercial cleaning needs of customers throughout the Oklahoma City area.

3. Defendant structures its business in a way that attempts to avoid providing its workers with the protections afforded by the FLSA. Rather than properly classifying its cleaners as employees, Defendant deems these workers independent franchise owners, and therefore outside the scope of federal wage and hour protections.

4. As a result, Defendant violated and continues to violate federal law by classifying its cleaners as independent franchisees when they are, in fact, employees. Due to this unlawful misclassification, Defendant has violated the recordkeeping requirements of the Fair Labor Standards Act.

B. FACTUAL ALLEGATIONS

i. The Parties

5. Plaintiff Thomas E. Perez is the Secretary of Labor, United States Department of Labor (the “Secretary”), and is authorized to enforce the provisions of the FLSA, and to seek injunctive relief on behalf of employees employed in violation of the FLSA’s record keeping provisions. 29 U.S.C. §§ 211(c), 215(a)(5), and 217.

6. Defendant is a Texas corporation with a principal place of business at 3535 NW 58th Street, #200, Oklahoma City, OK 73112, within this Court’s jurisdiction.

ii. Jurisdiction and Venue

7. Jurisdiction of this action is conferred upon the Court by section 17 of the FLSA, 29 U.S.C. § 217, and by 28 U.S.C. §§ 1331 and 1345.

8. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391 insofar as the Defendant has its principal office in this Judicial District.

iii. Defendants Are an Enterprise Engaged in Commerce

9. At all relevant times, Defendant has been an enterprise within the meaning of section 3(s) of the Act, 29 U.S.C. § 203(s), in that Defendant has been engaged in commerce or in the production of goods for commerce and has employees engaged in commerce or in the production of goods for commerce, or that handle, sell, or otherwise work on goods or materials

that have been moved in or produced for commerce; and has an annual gross volume of sales made or business done in excess of \$500,000.

iv. Defendant's Cleaners are Economically Dependent on Defendant and are Defendant's Employees under the FLSA

10. The Secretary brings this action seeking proper recordkeeping of hours and pay for individuals whom Defendant employs as cleaners but whom Defendant characterizes as “franchisees” in violation of the Fair Labor Standards Act.

11. Defendant's so-called “franchisees” are in fact laborers who are required to pay Defendant a franchise fee, continuing royalties, and other payments in order to work jobs such as cleaning carpets and hard floors, disposing of trash, washing windows, and other cleaning services provided to a variety of Defendant's clients in the Oklahoma City area.

12. As a matter of economic reality, Defendant's cleaners are employees under the FLSA. Defendant's cleaners are economically dependent on Defendant, who suffers or permits them to work as cleaners, providing cleaning services—a function integral to Defendant's business—on cleaning contracts that Defendant negotiates, maintains, and controls. In most instances, Defendant's cleaners rely exclusively on Defendant for business and are not, as a matter of economic reality, in business for themselves.

13. Defendant controls and owns the cleaning contracts that Defendant's cleaners service. Defendant can reassign those contracts from one cleaner to another as Defendant chooses. In the rare instance when cleaners obtain their own customers and negotiate their own cleaning rates, Defendant can (and does) take contracts away from cleaners and reassigns them to other cleaners. Defendant has sole discretion on all aspects of the cleaning contract.

14. Defendant also retains the exclusive right to perform all administrative functions relative to cleaners' customers, including sole discretion over all financial aspects of the cleaning contracts such as billing and invoicing. Specifically, Defendant handles all aspects of how and whether cleaners are paid for the work they perform. Payment for janitorial work is made directly by customers to Defendants rather than to cleaners directly. Indeed, Defendant requires that cleaners report to Defendant's office to obtain payment for their work, which Defendant disburses.

15. In most cases, cleaners are not using business skill, judgment, or initiative with respect to the work they perform; nor do they exercise managerial skill in running their "business." Rather, Defendant controls the flow and assignments of cleaning jobs to franchisees. It also handles all aspects of marketing and advertising with very few exceptions. Under such unilateral constraints, cleaners are not truly in business for themselves and instead are employees.

16. The relative investments of cleaners are minimal compared to those of Defendant. As stated above at ¶¶ 13-15, Defendant has invested in and developed an infrastructure enabling it to obtain, maintain, and control the essential functions of its janitorial business. In contrast, cleaners' investment is more limited; they bear the burden of buying the tools and equipment allowing them to perform cleaning functions on Defendant's contracts.

17. For reasons included but not limited to those stated in ¶¶ 13-16, Defendant's business model creates an employment relationship because it renders cleaners economically dependent on Defendant rather than truly being in business for themselves. Hence, Defendant is an employer and Defendant's cleaners are employees under sections 3(d), 3(e), and 3(g) of the

FLSA. 29 U.S.C. § 203(d), (e) & (g), and Defendant must comply with the FLSA's provisions including record keeping.

C. RECORD KEEPING VIOLATIONS

i. As an Employer, Defendant must comply with the FLSA and its record-keeping requirements.

18. Defendant, an employer subject to the provisions of the FLSA, violated the provisions of sections 11(c) and 15(a)(5) of the FLSA in that it failed to make, keep, and preserve adequate and accurate records of employees and the wages, hours and other conditions and practices of employment maintained by them as prescribed by regulations duly issued pursuant to authority granted in the FLSA and found in 29 C.F.R. Part 516.

19. Defendant failed to maintain and preserve payroll or other records regarding each employee containing the name, address, date of birth, and sex and occupation in which each employee is employed.

20. Defendant failed to maintain a weekly record of hours worked, including any hours worked in excess of 40 hours in a workweek.

D. PRAYER FOR RELIEF

21. Defendant has violated the FLSA as alleged above. Section 17 of the FLSA, 29 U.S.C. § 217, specifically authorizes issuance of an order enjoining the alleged violations, including the FLSA's record-keeping provision, and requiring Defendant to make, keep, and preserve such records of the persons employed by Defendant and of the wages, hours, and other conditions and practices of employment maintained by Defendant.

WHEREFORE, cause having been shown, Plaintiff prays for judgment against Defendant as follows:

I. For an order pursuant to section 17 of the FLSA permanently enjoining and restraining Defendant, its officers, agents, servants, employees, and those persons in active concert or participation with Defendant, from violating sections 11(c) and 15(a)(5) of the FLSA; and

II. A monetary award to Plaintiff for the costs of this action; and

III. Such other and further relief as this Court deems just and appropriate.

Dated this 29th day of September, 2016.

Respectfully submitted,

M. Patricia Smith, Solicitor of Labor
James E. Culp, Regional Solicitor
John Rainwater, Associate Regional Solicitor
Lydia Tzagoloff, Wage & Hour Counsel

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