

**UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND**

JOHN FULLER, MAQUNAIR,)
RODRIGUES DE FREITAS, and) Case Number. _____
ADILSON DOS SANTOS,)
individually and on behalf of all)
others similarly situated)
))
))
Plaintiffs,) **CLASS ACTION COMPLAINT**
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v.)
))
SYATT FRANCHISING, INC. d/b/a)
JANI-KING OF GREATER)
RHODE ISLAND, JANI-KING)
INTERNATIONAL, and) **JURY TRIAL DEMANDED**
JANI-KING, Inc.)
))
Defendants,)
)

CLASS ACTION COMPLAINT

1. The instant complaint is brought on behalf of the plaintiffs, John Fuller, Maqunair Rodriques De Freitas (Marcio De Freitas), Adilson Dos Santos and other similarly situated individuals who have performed cleaning services for the defendants, Syatt Franchising, Inc, d/b/a Jani-King of Greater Rhode Island, Jani-King International, and Jani-King, Inc. (collectively hereinafter “Jani-King” or “defendants”) and as class action on behalf of others similarly situated, namely, all other individuals who have performed cleaning services for Jani-King and/or its parent organization, successors and assigns within Massachusetts and have been subjected to the legal violations described in this complaint within Massachusetts and have been subjected to the legal violations described in this complaint. The proposed class meets all of the requirements of Rule 23 of the Federal Rules of Civil Procedure.

2. The plaintiffs and others have been subjected to systemic misrepresentations and breaches of contract in their relations with Jani-King as described below. Most notably, Jani-King purports to sell cleaning “franchises” knowing it does not have sufficient business to satisfy its obligations under its franchise agreements. Individuals must purchase these “franchises” for substantial sums of money, based on Jani-King’s misrepresentations about the guaranteed amount of monthly income the franchises will provide. This “pay for work” scheme has already been determined to be a violation of the Massachusetts Wage Laws. In addition, Jani-King has also improperly misclassified the plaintiffs and others as independent contractors and thereby denied them various benefits to which they are entitled to as employees under the wage laws of Massachusetts. These laws provide for guaranteed minimum wage, overtime pay, other wage protections, and other benefits of employment, such as eligibility for unemployment and worker’s compensation benefits. In this action, the plaintiffs seek to recover compensation for these violations, statutory trebling of wage related damages, and attorney’s fees and costs as provided for by law.

PARTIES

3. Plaintiff, John Fuller, is an adult resident of Rochester, County of Bristol, Commonwealth of Massachusetts. Mr. Fuller performed cleaning services for Jani-King in Massachusetts from approximately September 2011 to March 2015.

4. Plaintiff, Adilson Dos Santos, is an adult resident of Fall River, County of Bristol Commonwealth of Massachusetts. Mr. Dos Santos began performing cleaning services for Jani-King on or about February 2008 and continues to the present day.

5. Plaintiff, Maqunair Rodrigues De Freitas, is an adult resident of Fall River, County of Bristol Commonwealth of Massachusetts. Mr. De Freitas began performing cleaning services for Jani-King on or about July 2008 and continues to the present day.

6. The defendant, Syatt Franchising, Inc., is a Rhode Island Corporation with a principal place of business in Providence, County of Providence, State of Rhode Island. Syatt Franchising, Inc. does business as Jani-King of Greater Rhode Island.

7. The defendant, Jani-King International, is a foreign corporation organized in the State of Texas with a principal place of business in Addison, Texas. Defendant Jani-King International, Inc. is the largest janitorial franchise company in the world. Jani-King International, Inc. owns Jani King, Inc., which in turn owns Jani-King of Greater Rhode Island. On information and belief, Jani-King International dominates the affairs of Jani-King, Inc., and Jani-King of Greater Rhode Island., which act as its agents, exist solely to conduct the business of Jani-King International, and/or have no independent corporate existence. By its own activities and/or those performed through these corporate affiliates, Jani-King International has subjected itself to jurisdiction in Massachusetts.

8. The Defendant Jani-King, Inc. owns Jani-King of Greater Rhode Island and is an affiliate of Jani-King International, Inc. On information and belief, Jani-King, Inc. acts as Jani-King International's agent, exists solely to conduct the business of Jani-King International, and/or has no independent corporate existence. By its own activities and those performed through its corporate parent and subsidiary, Jani-King, Inc. has subjected itself to jurisdiction in Rhode Island.

STATEMENT OF FACTS

9. Jani-King International employs thousands of cleaning workers across the United States to perform cleaning work for customers who negotiate cleaning services accounts with Jani-King. The plaintiffs herein are such workers.

10. Jani-King requires its cleaning workers to sign “franchise agreements” in order to obtain work and its labels its cleaning workers as “franchisees”.

11. In order to induce workers to sign these franchise agreements (which it does through high pressure sales tactics), the defendants, negligently and/or intentionally misrepresents that it has sufficient business to provide the monthly income it promises the workers in its agreements. More often than not, Jani-King does not have enough accounts to offer to workers who have signed franchise agreements to generate state monthly income.

12. Thus, Jani-King knows it does not have sufficient business to satisfy the terms of the franchise agreements when it advertises franchises, solicits franchisees, and enters into franchise contracts. Jani-King knowingly and willfully solicits and enters into agreements which it knows it cannot perform.

13. Jani-King also misrepresents that workers will receive a higher hourly rate of pay for their work than Jani-King knows they will be able to earn.

14. Jani-King’s franchise agreement is a form contract of adhesion establishing the terms and conditions of employment of Jani-King cleaning workers.

15. None of the Jani-King cleaning workers are able to negotiate for different terms and conditions from those appearing in the form franchise agreement.

16. The form franchise agreement is written exclusively in English, in highly technical and confusing language, with misleading section headings and provisions regarding waivers of important rights buried within the agreement.

17. The form franchise agreements are not available in other languages, although many of the workers who sign these form franchise agreements have little or no fluency in English. Some of the named plaintiffs here, speak primarily Portuguese.

18. As a result, as Jani-King knows, the plaintiffs and others, do not understand the terms of the agreement, whether or not they speak or read English.

19. Jani-King targets immigrants in particular because they are easily victimized by Jani-King's misrepresentations and other systemic legal violations, as described herein.

20. Pursuant to these form franchise contracts, the workers (which include the plaintiffs) pay substantial sums of money as "franchise fees" (ranging from \$3,200.00 to more than \$30,000.00) in order to obtain cleaning work.

21. In exchange for these large franchise fees, Jani-King guarantees a certain level of monthly income beginning after the workers have made down payments to purchase their franchise and have completed their "training period".

22. This "training period" usually consists of a one day orientation.

23. Jani-King systematically breaches its franchise agreements by not providing or offering sufficient or adequate work as promised to produce the guaranteed level of income. Rarely, if ever, do the workers (including the plaintiffs) receive the promised level of monthly income.

24. For example, the plaintiff, John Fuller, paid an initial down payment of \$2,500.00 towards a franchise fee of \$6,800.00 the balance of the franchise fee was financed through a promissory note from the defendants at 6% interest. The plaintiff was promised \$1,000.00 per month for his purchase of "Plan B". The plaintiff typically received (on average) less than \$1,000.00 per month during most of the time working for Jani-King.

25. The plaintiff, Adilson Dos Santos, paid an initial down payment of \$4,250.0 towards a franchisee fee of \$10,250.00, the balance of which was financed as well. The plaintiff was promised initial business of \$2,000.00 per month under "Plan C".

26. Throughout their time working for the defendants, Plaintiffs rarely earned more than the promised monthly income after numerous deductions were made including royalty/management fees, “other deductions”, insurance and workers’ compensation.

27. Through a variety of means involving misrepresentation, Jani-King purports to satisfy its obligations under the form franchise agreements when it has come nowhere near satisfying those obligations. Through means, Jani-King attempts to make it appear that it is the worker’s fault, rather than Jani-King’s, that they do not have sufficient accounts to satisfy their monthly income guarantee.

28. For example, Jani-King, negligently and/or intentionally misrepresents the number of hours per week that will be required to service the accounts offered, provides accounts that are geographically inconvenient, spread very far apart, making it impossible to accept or perform the work required for these accounts.

29. Jani-King typically contends that it has fulfilled its obligations under the franchise agreements by offering accounts, knowing that accounts offered could not be accepted due to geographic inconvenience, sheer impossibility of performing the number of hours required to service the accounts, or rates of pay well below what was promised.

30. Jani-King also frequently violates the form franchise agreements by taking accounts away without warning and/or for no justifiable reason. Also in violation of the agreement, Jani-King gives no opportunity to correct or challenge alleged deficiencies in worker’s performance.

31. When doing so, Jani-King frequently tells the workers (including the putative plaintiffs) performing the cleaning services that the customers were dissatisfied with their work, when in fact, the customers were satisfied with their work.

32. After taking the account away from the worker, Jani-King offers the account to another “franchisee” who has signed a franchise agreement to count toward that person’s monthly guarantee. In this way, Jani-King can churn the accounts over and over generating more income (for Jani-King) while making it appear that it has satisfied its franchise agreements.

33. When Jani-King does not satisfy the terms of the worker’s franchise agreements by not offering sufficient accounts (that are free from misrepresentations) or by taking accounts without justification or warning, it does not refund the franchise fees the workers have already paid. Indeed, Jani-King requires workers to continue making payments on their franchise fees, billing them for these payments, even when they have no further work from Jani-King or can provide the guaranteed monthly income.

34. In addition, Jani-King deducts excessive fees from the payments it makes to workers under the franchise agreements. Typically, these fees amount to a 15%-20% deduction in the payments made to the workers.

35. Jani-King significantly underbids cleaning contracts with its clients as a result, workers who have contracted with Jani-King receive far less pay for their work than the fair value of their services and far less pay than they were promised on a hourly and monthly basis.

36. Jani-King purports to classify its cleaning workers as independent contractors. However, these workers are in fact employees under the statutes of the Commonwealth of Massachusetts. Specifically, under Massachusetts Law, G.L. c. 149 section 148B, the workers including the plaintiff do not meet the definition of independent contractors.

37. The behavioral and financial control manifested over the plaintiff by Jani-King demonstrates that the plaintiffs are employees rather than an independent contractor.

38. The plaintiffs perform services within Jani-King's usual course of business, which is to provide cleaning service to customers.

39. Also, Jani-King instructed the plaintiffs in how to do their work and dictated their performance of the details of their job.

40. The plaintiffs and other workers, generally do not work in an independently established trade, occupation, profession, or business. Instead, as required by their contracts, the cleaning workers/plaintiffs perform cleaning services exclusively for Jani-King's clients.

41. Also, the plaintiffs does not represent themselves to the public as being an independent business to provide cleaning services, and did not invest in an independent business apart from their payment of "franchise" fees to Jani-King.

42. Plaintiffs are required to abide by the terms of the agreements which contain non-compete provisions prohibiting them from soliciting customers on their own and/or competing with Jani-King.

43. Plaintiffs serviced Jani-King accounts within the Commonwealth of Massachusetts during the relevant statutory period.

44. In fact, other Jani-King franchisees in Massachusetts have been deemed to be employees under G.L. c. 149 Section 148B. See DiGrovani v. Jani-King, (Wolf, D.J.), Civil Action No. 07-10066-MLW

45. Another Judge of the United States District Court in Massachusetts has ruled that workers under a similar franchise agreement were employees and not independent contractors under Massachusetts Law. See Awuah v. Coverall North America, 2010 WL 1257980 (D. Mass. Mar. 23, 2010) 2010 WL 1257980 (D. Mass. Mar. 23, 2010)

46. Because of the misclassification by Jani-King as an independent contractors, the plaintiffs have not received the benefits that inure from the employment relationship under law.

47. For example, Jani-King workers frequently do not receive the minimum wage for the work they performed.

48. Although in numerous occasions, the plaintiffs worked more than 40 hours for week, they did not receive one and one-half times his regular rate for hours worked in excess of 40 hours per week.

49. Numerous deductions were made from their pay, which constitute improper deductions from wages. For example, Jani-King deducts payments towards franchise fees, interest payments, payments for “royalty/management” fees, insurance, worker’s compensation fees. It also withheld pay to the plaintiffs when Jani-King claimed it was not paid by its clients.

50. The plaintiffs were not paid for their time spent traveling between different accounts during the day.

51. Jani-King does not provide its own workers’ compensation policy but, rather forces the plaintiffs to purchase same and deducts the premiums from their monthly payments.

52. The plaintiffs have sought and obtained permission to maintain a private right of action by the Massachusetts Attorney General’s Office.

JURISDICTION AND VENUE

53. This Court has original jurisdiction over each of the parties in this action pursuant to 28 U.S.C. Section 1332. This court has jurisdiction over the subject matter of this action as the amount in controversy is greater than the sum of \$75,000.00

54. Venue is appropriate pursuant to the terms and conditions of the contract between the parties.

CLASS ALLEGATIONS

55. The Plaintiffs seek to represent a Class of similarly situated individuals.

56. The Class members are so numerous that joinder of all their members would be impracticable. On information and belief, over the relevant period, more than 60 individuals would be part of the class.

57. Defendants engage in a common course of conduct that violated the legal rights of the Plaintiff and the Class members. There are numerous material questions of law or fact common to the Class that will necessarily dominate the Court's analysis of Plaintiff's claims, including, primarily whether the Defendants mis-classified the Plaintiffs as independent contractors, made unlawful deductions from their pay and shifted the cost of doing business on the Plaintiff and other drivers.

58. The Plaintiffs' claims are typical of the claims belonging to absent Class members. The Plaintiff and the absent Class members are similarly-situated employees who performed the same work under the same conditions, were improperly classified as independent contractors, had improper deductions taken out of their pay and were forced to incur expenses related to the Defendants' operation of its business and, as a result, suffered the same type of harm.

59. The Plaintiffs will fairly and adequately assert and protect the interests of absent Class members. The Plaintiffs are familiar with the facts that form the bases of the Class members' claims.

60. The Plaintiffs have retained competent and experienced Class action counsel who intends to prosecute this action vigorously. Plaintiffs' counsel have successfully prosecuted many complex Class actions, including wage and hour class actions, and will fairly and adequately protect the interests of the absent Class members; and

61. Allowing this action to proceed as a class action will provide a fair and efficient method for adjudication of the issues presented by this controversy. Common questions of law or fact

predominate over any questions affecting only individual members, as the Plaintiffs seeks to remedy a shared legal grievance (e.g., non-payment of wages, improper deductions) and shared harm (e.g., unpaid wages and employment benefits) on behalf of a Class of similarly-situated employees.

62. The class action device is superior to other available means for the fair and efficient adjudication of the Plaintiff's claims. The relief sought by individual Class members is small given the burden and expense of individual prosecution of the potentially extensive litigation necessitated by the Defendants' conduct. Individual litigation of the legal and factual issues raised by the Defendants' conduct would cause unavoidable delay, a significant duplication of efforts, and an extreme waste of resources. Alternatively, proceeding by way of a Class action would permit the efficient supervision of the Class' claims, give rise to numerous economies of scale for the Court and for the parties, and result in a binding and uniform adjudication on each issue for every party.

63. The Plaintiffs seeks certification of a class of all similarly situated employees who worked for the Defendants in Massachusetts at any time within the three (3) years of the commencement of this action up through the time of judgment, or such other times as determined by the Court.

COUNT I

(Unjust Enrichment)

64. Through the conduct described above, the defendants have been unjustly enriched under the common law of the Commonwealth of Massachusetts.

COUNT II

(Misclassification as Independent Contractors)

65. The defendants have knowingly and willfully misclassified the plaintiffs and others as independent contractors instead of employees, in violation of the statutory and common law of the Commonwealth of Massachusetts (M.G.L. c. 149 Section 148B).

COUNT III

(Wage Violations)

66. The defendants knowing and willful failure to pay the plaintiffs all wages owed to them including minimum wage, overtime, wages for all hours worked, improper deductions from their pay, violates the wage laws of the Commonwealth of Massachusetts. (G.L. c. 149 Section 148 and 150; G.L. c. 151 Sections 1 and 1A.

JURY DEMAND

Plaintiffs demand a trial by jury on all counts in their complaint.

WHEREFORE, Plaintiffs request that the Court enter the following relief;

1. Award damages against the defendants attributable to their statutory and common law violations.
2. Statutory enhancements of damages as allowed by law.
3. Declaratory and injunctive relief requiring the defendants to cease their illegal practices and a declaration that the plaintiffs and others are in fact employees under Massachusetts Law and not Independent Contractors.
4. Attorney's fees as allowed by law.
5. Rescission of the written contract between the defendant and plaintiffs, in whole or in part; and
6. Award any other relief to which the plaintiffs may be entitled.
7. An order certifying that this action is properly brought and may be maintained as a

class action under Rule 23 of the Federal Rules of Civil Procedure, and that Plaintiff be appointed as Class Representative of Massachusetts Class, and that Plaintiff's counsel be appointed Class Counsel.

October 19, 2015

The plaintiffs, John Fuller, Adilson Dos Santos, Marcio De Freitas
By their attorneys,

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