IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JANI-KING INTERNATIONAL, INC., a corporation organized under the laws of the State of Texas,	
JANI-KING FRANCHISING, INC., a corporation organized under the laws of the State of Texas,	
OHIO SERVICES-CLE, LLC dba JANI-KING OF CLEVELAND, a limited liability company organized under the laws of the State of Ohio,	
and	
A AND A ENTERPRISES, LLC dba JANI-KING, a limited liability company organized under the laws of the State of Mississippi,	**Case No.: 1:20-CV-00989 (TNM)**
Plaintiffs,	
v.	
UNITED STATES SMALL BUSINESS ADMINISTRATION,	
and	
JOVITA CARRANZA, in her official capacity as Administrator of the United States Small Business Administration,	
Defendants	

AMENDED VERIFIED COMPLAINT

Plaintiffs—Jani-King International, Inc. ("Jani-King International" or "The JANI-KING® Trademark Owner"), Jani-King Franchising, Inc. ("JKF" or "The JANI-KING® Franchisor"), Ohio Services–CLE, LLC dba Jani-King of Cleveland ("Ohio Services" or "The Ohio JANI-

KING® Master Franchise"), and A and A Enterprises, LLC dba Jani-King ("A and A Enterprises" or "The Tri-State JANI-KING® Unit Franchisee")—by counsel, respectfully state as follows for their Amended Verified Complaint. By way of their Verified Complaint, Plaintiffs seek permanent injunctive relief pursuant to Rule 65 of the Federal Rules of Civil Procedure; judicial review pursuant to 5 U.S.C. §§ 701–706; and a declaratory judgment pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201–02 against Defendants, the United States Small Business Administration (the "Agency") and Jovita Carranza, in her official capacity as Administrator of the United States Small Business Administration (the "Administrator") (collectively, the "SBA"). This relief is necessary because the SBA is violating the Administrative Procedure Act, 5 U.S.C. § 501 *et seq.* (the "APA"), in implementing the Paycheck Protection Program ("PPP") loan program (the "Temporary PPP Loan Program") established by the Coronavirus Aid, Relief, and Economic Security Act, Public L. No. 116–136 §§ 1101–03, 1107, and 1104 (the "CARES Act") and the pre-existing SBA loan guarantee program established by Section 7(a) of the Small Business Administration Act, 15 U.S.C. § 636(a) (the "Section 7(a) SBA Loan Program").

NATURE OF ACTION

1. As enacted by Congress and signed by the President, the CARES Act established the Temporary PPP Loan Program for the purpose of quickly providing emergency relief to qualifying small businesses affected by the current COVID-19 pandemic and their employees. The statutory language of the CARES Act is clear that PPP loans guaranteed by the SBA are available to any qualifying small business, defined as a business with fewer than 500 employees. The name of the program itself—the "***Paycheck*** Protection Program"—reflects congressional intent to benefit the employees of small businesses that face, or have already suffered, furloughs and layoffs as a direct result of the federal, state and local public health measures being taken to

minimize exposure to the novel coronavirus, including government-mandated closures of businesses. The paychecks that the Temporary PPP Loan Program is intended to protect include those of janitorial employees employed by members of the JANI-KING® Franchise System. The SBA itself has acknowledged that "[t]he intent of the [CARES] Act is that the SBA provide relief to America's small businesses expeditiously, which is expressed in the Act by giving all lenders delegated authority and streamlining the requirements of the regular 7(a) loan program." 85 Fed. Reg. 20811 (Apr. 15, 2020). Unfortunately, the SBA's actions in this case speak louder than its words.

2. Ignoring the plain statutory language of the CARES Act, the SBA has implemented the PPP in such a way that discriminates against any small business that operates pursuant to an agreement that the SBA—which has no enforcement authority for any federal or state franchise laws—has determined to be a "franchise" within the meaning of the FTC Franchise Disclosure Rule, 16 C.F.R. Parts 436 and 437. Notwithstanding its discriminatory implementation of the PPP under the CARES Act, the SBA has permitted some small businesses classified as "franchises" to qualify for PPP loans. This has not been the case, however, in the commercial cleaning industry in general and the JANI-KING® Franchise System in particular. While unlawfully restricting access to PPP loans to many franchised businesses, including members of the JANI-KING® Franchise System, the SBA has expanded eligibility to certain other types of businesses—such as casinos—that are ineligible under the pre-existing Section 7(a) SBA Loan Program.

3. The APA requires the SBA to undertake a formal rulemaking process involving notice to, and opportunity to comment by, the public ***before*** adopting a legislative rule that has the force and effect of law and substantially affects the rights of those subject to its authority—

such as applicants for loans under the Temporary PPP Loan Program and the Section 7(a) SBA Loan Program. Unlike duly promulgated regulations, the SBA's internal policies and procedures do not have the force of law. The APA prohibits the SBA, in administering both the Temporary PPP Loan Program and the Section 7(a) SBA Loan Program, from enforcing any internal policies and procedures that conflict with duly promulgated regulations. Yet that is precisely what the SBA has done with respect to its internal "standard operating procedures." These "standard operating procedures" include SOP Section 50, No. 10, entitled "Lender and Development Company Loan Programs" (the "SOP"). The SBA has used (actually, ***ab***used) the SOP to impose eligibility restrictions on franchised businesses applying for PPP loans that find no support in the SBA's duly promulgated regulations governing eligibility for the Section 7(a) SBA Loan Program in general and the Temporary PPP Loan Program in particular.

4. The law that the SBA is required to follow is limited to statutes enacted by Congress and regulations promulgated by the SBA that have first undergone public notice and comment. Rather than follow the law, the SBA has imposed eligibility criteria for the Temporary PPP Loan Program and the Section 7(a) Loan Program that have no basis in any statute or regulation. The SBA bureaucracy has simply decreed—with no lawful basis—that members of the JANI-KING® Franchise System are ineligible to receive assistance under either the Temporary PPP Loan Program or the Section 7(a) SBA Loan Program.

5. The "JANI-KING® Franchise System" consists of three tiers: (a) Plaintiff JKF, The JANI-KING® Franchisor, (b) JANI-KING® Master Franchises (such as Plaintiff Ohio Services, The Ohio JANI-KING® Master Franchise), and (c) "JANI-KING® Unit Franchisees" (such as Plaintiff A and A Enterprises, The Tri-State JANI-KING® Unit Franchisee). Because of the SBA's misinterpretation of its statutory authority and the duly promulgated regulations

implementing that statutory authority, the SBA generally will not guarantee—and lenders typically will not even submit—applications for such loans to the following members of the JANI-KING® Franchise System:

a. The JANI-KING® Franchisor, which has fewer than 500 employees and otherwise qualifies for a PPP loan under the criteria set forth in the CARES Act;

b. 87 JANI-KING® Master Franchises nationwide, including The Ohio JANI-KING® Master Franchise, each of which has fewer than 500 employees and otherwise qualifies for a PPP loan under the criteria set forth in the CARES Act; and

c. approximately 5,600 JANI-KING® Unit Franchisees nationwide, including The Tri-State JANI-KING® Unit Franchisee, each of which—as far as Plaintiffs know—has no more than 500 employees.

Plaintiffs are aware of only one instance in which the SBA did accept and agree to guarantee a PPP loan to a JANI-KING® Unit Franchisee. Even then, the SBA later informed the lender—after the PPP loan had already closed and been funded—that the JANI-KING® Unit Franchisee would be ineligible for the loan forgiveness provisions of the Temporary PPP Loan Program that, under the CARES Act, are supposed to be available to any qualifying small business that meets the criteria set forth in the statute.

6. The SBA's implementation of the Temporary PPP Loan Program has, in effect, amended the CARES Act and the underlying SBA business loan regulations in ways that are not supported by and indeed contrary to the stated purpose and express provisions of the statute in a number of ways. One way that the SBA has misapplied the statute is its refusal to guarantee a PPP loan to any small business that happens to be a "franchise" unless the franchise agreement pursuant to which it is operated has been approved by the SBA for listing in the SBA Franchise

Directory that the SBA maintains at www.sba.gov/sba-franchise-directory (the "Directory"). There is no such requirement for eligibility in the CARES Act itself. To the contrary, when it passed the CARES Act, Congress expressly and emphatically repudiated a recent attempt by the SBA to suggest such a requirement by amending the SBA's regulation governing when a franchisee should be deemed to be "affiliated" with its franchisor.

7. The SBA's attempt to impose such a requirement *sub silentio* took place more than a month and a half before passage of the CARES Act. On February 10, 2020, the SBA published an interim final rule at 85 Fed. Reg. 7622 (Feb. 10, 2020) (the "Revoked Affiliation Rule"). If it were in effect, the Revoked Affiliation Rule would have substantially expanded and revised 13 C.F.R. § 121.301(f), the SBA regulation establishing the affiliation rules for the SBA's business loan program, including the Section 7(a) SBA Loan Program. Before the revisions that the SBA attempted to make through the Revoked Affiliation Rule, the governing affiliation principles applicable to franchised businesses seeking a loan pursuant to the Section 7(a) SBA Loan Program were set forth in 13 C.F.R. § 121.301(f)(5), "Affiliation based on franchise and license agreements." It stated as follows:

> The restraints imposed on a franchisee or licensee by its franchise or license agreement generally will not be considered in determining whether the franchisor or licensor is affiliated with an applicant franchisee or licensee provided the applicant franchisee or licensee has the right to profit from its efforts and bears the risk or loss commensurate with ownership. SBA will only consider the franchise or license agreements of the applicant concern.

8. In other words, before February 10, 2020—when the SBA attempted to impose the Revoked Affiliation Rule—the SBA's duly promulgated regulations for the Section 7(a) SBA Loan Program provided that the SBA would ***not*** consider a franchise agreement as giving rise to "affiliation" between a franchisor and its franchisee as long as the franchisee "has the right to

profit from its efforts and bears the risk of loss commensurate with ownership." That simple and straightforward test is one that all Plaintiffs can pass with flying colors. Under the SBA's governing regulations in effect before February 10, 2020, it is indisputable that the SBA would have no valid basis for finding Plaintiff Ohio Services, a "Mom and Pop" JANI-KING® Master Franchise with 18 full-time employees, to be an "affiliate" of Plaintiff Jani-King Franchising. Similarly, there would be no valid basis for finding Plaintiff A and A Enterprises to be an "affiliate" of its independently owned JANI-KING® Master Franchise.

9. By issuing the Revoked Affiliation Rule, the SBA sought to alter and substantially expand the "Affiliation based on franchise and license agreements" subsection of 13 C.F.R. § 121.301(f). The SBA moved that subsection from 121.301(f)(5) to 121.301(f)(7). More importantly, the SBA added the following language after the above-quoted language that had previously appeared at 121.301(f)(5): "SBA will maintain a centralized list of franchise and other similar agreements that are eligible for SBA financial assistance, which will identify any additional documentation necessary to resolve any eligibility or affiliation issues between the franchisor and the small business applicant." By adding this verbiage on February 10, 2020, the SBA introduced into its regulations—for the very first time—the notion that the SBA ***might*** treat listing in the SBA Franchise Directory as a prerequisite for eligibility under the Section 7(a) SBA Loan Program. Even then, the Revoked Affiliation Rule did not impose such a requirement explicitly.

10. Before February 10, 2020, the reference to the Directory had never before appeared in SBA regulations published through notice-and-comment rulemaking. The SBA had, however, previously incorporated a requirement for franchises to be listed in the Directory as an eligibility requirement for the Section 7(a) SBA Loan Program in the SOP. Like the Agency's

other "standard operating procedures," the SOP is an internal SBA procedure, originated by the SBA's Office of Capital Access, addressed to "All SBA Employees" rather than the public at large. Revisions to the SOP do not undergo notice and comment under the APA because the SOP is an internal SBA procedure that—unlike a regulation—does not have the force and effect of law and cannot bind the public.

11. In Revision 5(J)[1] of the SOP, which became effective January 1, 2018, the SBA first purported to make listing in the Directory an eligibility requirement for franchised businesses seeking SBA financial assistance. SBA SOP 50 10 5(J), Subpart B, Chapter 2, Paragraph II.D.8(b). Before that January 1, 2018 revision to the SOP, being listed in the Directory had simply been one method for streamlined pre-approval of a loan to a franchised small business under the Section 7(a) SBA Loan Program. In other words, before January 1, 2018, the SBA treated a franchise's listing in the Directory as the regulatory equivalent of TSA Pre-Check at airport security. Effective January 1, 2018, however, the SBA began treating listing in the Directory as an absolute requirement for a "franchise"—as defined by the SBA—to be eligible for SBA financial assistance. Rather than impose this requirement lawfully through the rulemaking process, the SBA sought to impose this requirement lawlessly through its internal "standard operating procedures." Henceforth, a franchised business—no matter how small, no matter how independent its ownership and operation—would be deemed an "affiliate" of its franchisor unless the gatekeepers at the SBA deigned to list the "franchise" in the Directory.

12. In the CARES Act itself, Congress emphatically and unequivocally repudiated the Revoked Affiliation Rule. By doing so, Congress made clear that the SBA—not even in the Section 7(a) SBA Loan Program, and certainly not in the Temporary PPP Loan Program—could

[1] The current version of this SOP is Revision 5(K).

not deny loans to "franchises" simply because their franchise agreements were not listed in the Directory. Specifically, Section 1102(e) of the CARES Act, a subsection within the provision that established the Temporary PPP Loan Program itself, stated as follows: "On and after the date of enactment of this Act, the interim final rule published by the Administrator entitled 'Express Loan Programs: Affiliation Standards' (85 Fed. Reg. 7622 (February 10, 2020)) is permanently rescinded and shall have no force or effect." In other words, the SBA is now prohibited by statute from making listing in the Directory an eligibility requirement for SBA financial assistance. This is true under the Temporary PPP Loan Program specifically and the Section 7(a) SBA Loan Program generally.

13. Even if the Directory listing requirement had been a valid exercise of the SBA's authority under the Section 7(a) Loan Program, the Temporary PPP Loan Program is a separate, emergency loan program with its own eligibility criteria and a short lifespan. No provision of the CARES Act authorizes the SBA to limit eligibility under the Temporary PPP Loan Program to a "small business" that happens to be a "franchise" operated pursuant to a franchise agreement that the SBA has approved for listing in the Directory. To the contrary, the sole reference in the CARES Act to the Directory is a provision whereby a "franchise" listed in the Directory is automatically exempt from the SBA's so-called "affiliation" rules. These "affiliation" rules guide the SBA's determination whether an applicant for a loan guaranteed by the SBA should be deemed to have more than 500 employees for purposes of eligibility. Even if the requirement for listing in the Directory were a valid prerequisite for obtaining a loan pursuant to the Section 7(a) SBA Loan Program, and even if the SBA's "affiliation" rules were consistent with federal law—both propositions that Plaintiffs dispute—the Temporary PPP Loan Program created by the CARES Act contains no such limitation.

14. That Congress intended franchises listed in the Directory to benefit from a special statutory waiver of the SBA's affiliation rules under the Temporary PPP Loan Program does not mean that Congress endorsed SBA's practice of using a Directory listing as a prerequisite to eligibility for a Section 7(a) SBA Loan—much less a PPP loan. To the contrary, the CARES Act states unequivocally that the Revoked Affiliation Rule "shall have no force and effect" to prevent the SBA from using the Directory as a barrier to PPP loans for franchised small businesses.

15. The very fact that Congress limited the waiver of the affiliation rules to franchises listed in the Directory, rather than to franchised small businesses generally, shows that Congress understood and intended that small franchised businesses not listed in the Directory would also be eligible for PPP loans. If Congress agreed with the SBA's internal policy that only franchises listed in the Directory are eligible to receive SBA financial assistance, Congress would have had no need to limit the waiver of the affiliation rules to franchises that have a franchise identifier code. Use of the phrase "that is assigned a franchise identifier code by the Administration" would have been mere surplusage if Congress had agreed with the SBA that the only "business concern[s] operating as a franchise" eligible to participate in the Section 7(a) SBA Loan Program are those that are listed in the Directory and therefore have been assigned franchise identifier codes.

16. For many franchise systems, the SBA's unlawful imposition of its internal "standard operating procedure" requirement that the franchise agreement be listed in the Directory has merely delayed their eligibility for PPP loans by imposing a requirement that is nowhere to be found in the statute or the SBA's regulations. For the JANI-KING® Franchise System, however, the SBA's discriminatory determination as to whether a franchise can be listed in the Directory has, by and large, operated as an absolute bar to eligibility for PPP loans. Both

before and after enactment of the CARES Act, the SBA has found members of the JANI-KING® Franchise System to be ineligible for listing in the Directory based on a determination that the franchisor and every single franchisee in the JANI-KING® Franchise System should—in effect—be treated as a single entity that, collectively, has more than 500 employees necessary to qualify as a "small business" under the Temporary PPP Loan Program and the Section 7(a) SBA Loan Program.

17. Like every franchise system, the JANI-KING® Franchise System consists of one or more franchisors and franchisees. The JANI-KING® Franchisor licenses trademarks (the "Proprietary JANI-KING® Trademarks") and other intellectual property owned by The JANI-KING® Trademark Owner to 87 JANI-KING® Master Franchises nationwide. Of the JANI-KING® Master Franchises, 71 are independently owned and 16 are wholly-owned subsidiaries of Jani-King, Inc. (which is itself a wholly-owned subsidiary of Plaintiff Jani-King International, The JANI-KING® Trademark Owner). The JANI-KING® Master Franchises include Plaintiff Ohio Services, The Ohio JANI-KING® Master Franchise. Ohio Services is owned by a husband and wife, ***not*** The JANI-KING® Trademark Owner or The JANI-KING® Franchisor. Nor is Ohio Services otherwise "affiliated" with any member of the JANI-KING® Franchise System as the term "affiliated" is commonly understood. Each JANI-KING® Master Franchise, including The Ohio JANI-KING® Master Franchise, is a franchisee within the exclusive territory to which it purchased the rights. In its exclusive territory, each JANI-KING® Master Franchise is also a franchisor of independently owned commercial cleaning service companies (the JANI-KING® Unit Franchisees) to which it sublicenses the Proprietary JANI-KING® Trademarks for operation of their franchised businesses. In the U.S., the JANI-KING® Franchise System includes approximately 5,600 JANI-KING® Unit Franchisees. The independently owned and

operated JANI-KING® Unit Franchisees—including Plaintiff A and A Enterprises—cannot fairly be characterized as "affiliates" of other members of the JANI-KING® Franchise System.

18. Nationwide, the JANI-KING® Franchise System thus consists of approximately 5,688 separate entities: The JANI-KING® Franchisor, 87 JANI-KING® Master Franchises, and approximately 5,600 JANI-KING® Unit Franchisees. Each member of the JANI-KING® Franchise System—The JANI-KING® Franchisor, the 87 JANI-KING® Master Franchises, and the approximately 5,600 JANI-KING® Unit Franchisees—has fewer than 500 employees, has the right to profit from its efforts, and bears the risk of loss commensurate with ownership. The independently owned and operated members of the JANI-KING® Franchise System are therefore not affiliated with each other under the SBA affiliation rules. Accordingly, each independently owned and operated member of the JANI-KING® Franchise System is eligible to apply for and, if otherwise qualified, receive a PPP loan under the CARES Act as enacted by Congress and signed by the President. The SBA, however, has effectively rewritten the CARES Act and disregarded the plain text of its duly promulgated regulations. Instead, the SBA has imposed requirements and erected barriers to PPP loans found only in its internal "standard operating procedures." By doing so, the SBA has unlawfully deprived The JANI-KING® Franchisor, JANI-KING® Master Franchises, and JANI-KING® Unit Franchisees of their rightful ability to participate in the Temporary PPP Loan Program in accordance with the statute.

19. Both before and after passage of the CARES Act, the SBA has refused to include in the Directory any franchise agreement to which any member of the JANI-KING® Franchise System is a party. To the extent that the SBA has articulated any rationale for its refusal to list any such franchise agreements in the Directory, it has been one of two pre-texts. The first is the SBA's opinion that the JANI-KING® Franchisee, JANI-KING® Master Franchises, and JANI-

KING® Unit Franchises are "affiliates" of one another and therefore should be viewed as the equivalent of a single entity that—collectively—has more than the 500 employee threshold necessary to qualify as a "small business." It is not clear whether the SBA's refusal is based on purported "affiliation" between the franchisor and franchisees in the JANI-KING® Franchise System or on a second pretext. This second pretext is the SBA's inaccurate and incredible characterization of the members of the JANI-KING® Franchise System as "passive businesses" ineligible for the Section 7(a) SBA Loan Program under 13 C.F.R. § 120.110(c). Whatever its rationale, the SBA has no valid or legal basis to refuse to list JANI-KING® as a franchise in the Directory. Nor can the SBA bar members of the JANI-KING® Franchise System from obtaining loans under the Section 7(a) SBA Loan Program or the Temporary PPP Loan Program.

20. Since passage of the CARES Act, the SBA has treated PPP loan applications submitted by members of the JANI-KING® Franchise System in ways that are discriminatory compared to PPP loan applications of other franchise systems, at least outside the commercial cleaning industry. By and large, the SBA has refused to accept—much less approve—PPP loan applications submitted by JANI-KING® Master Franchises. On April 13, 2020, Plaintiff Jani-King International (The JANI-KING® Trademark Owner) did receive funding for a loan under the Temporary PPP Loan Program. The SBA presumably will deny eligibility for forgiveness of that loan under the Temporary PPP Loan Program as it did with at least one JANI-KING® Unit Franchisee, Plaintiff A and A Enterprises.

21. The SBA's discriminatory treatment of the JANI-KING® Franchise System under the Temporary PPP Loan Program and the Section 7(a) SBA Loan Program finds no support in, and is indeed contrary to, the plain language of the statutes by which these programs were established and the regulations implementing them. Moreover, to the extent that the SBA

purports to base its treatment of the JANI-KING Franchise System on alleged "ineligibility" under the pre-existing SBA regulations governing the Section 7(a) SBA Loan Program, the SBA has simultaneously cited the broad remedial intent underlying the CARES Act as the basis for permitting participation in the Temporary PPP Loan Program by certain other types of businesses expressly designated in those same regulations as "ineligible businesses." For example, the SBA has permitted casinos to participate in the Temporary PPP Loan Program. Congress created no special exception or allowance for casinos in the CARES Act itself. Rather, the SBA is interpreting the broad remedial intent of the CARES Act as sufficient to waive regulatory ineligibility under the Section 7(a) SBA Loan Program as a barrier to participation by casinos in the Temporary PPP Loan Program. The SBA has offered no rational basis for waiving regulatory ineligibility for casinos but not for other businesses. Thus, to the extent the SBA asserts that Plaintiffs—but not casinos—are ineligible to participate in the Temporary PPP Loan Program due to alleged inclusion in some category of businesses defined as "ineligible" for SBA financial assistance in 13 C.F.R. § 120.110, the SBA is administering the Temporary PPP Loan Program in an arbitrary and capricious and discriminatory manner.

22. As a small business with fewer than 500 employees, each member of the JANI-KING® Franchise System—The JANI-KING® Franchisor, each JANI-KING® Master Franchise (including The Ohio JANI-KING® Master Franchise), and each JANI-KING® Unit Franchisee (including The Tri State JANI-KING® Unit Franchisee)—is the type of recipient of such assistance that Congress and the President intended to aid on the same terms as any other small business. The fact that the cleaning and disinfecting services provided by the JANI-KING® Franchise System are part of the "front line" battle against COVID-19 adds insult to injury. To

prevent further injury to the JANI-KING® Franchise System that would be irreparable, Plaintiffs seek injunctive relief in addition to a declaratory judgment:.

PARTIES

(Plaintiffs)

The JANI-KING® Trademark Owner

23. Plaintiff Jani-King International, Inc. ("Jani-King International" or "The JANI-KING® Trademark Owner") is a corporation organized under the laws of the State of Texas with its principal place of business at 16885 Dallas Parkway, Addison, Texas 75001.

The JANI-KING® Franchisor

24. Plaintiff Jani-King Franchising, Inc. ("JKF" or "The JANI-KING® Franchisor") is a corporation organized under the laws of the State of Texas with its principal place of business at 16885 Dallas Parkway, Addison, Texas 75001.

The Ohio JANI-KING® Master Franchise

25. Plaintiff Ohio Services–CLE, LLC dba Jani-King of Cleveland ("Ohio Services" or "The Ohio JANI-KING® Master Franchise") is a limited liability company organized under the laws of the State of Ohio with its principal place of business located at 9075 Town Centre Drive, Suite 20, Broadview Heights, Ohio 44147.

The Tri-State JANI-KING® Unit Franchise

26. Plaintiff A and A Enterprises, LLC dba Jani-King ("A and A Enterprises" or "The Tri-State JANI-KING® Unit Franchisee") is a limited liability company organized under the laws of the state of Mississippi with its principal place of business located at 23516 Enchanted Avenue, Pass Christian, Mississippi 39751.

(Defendants)

The SBA

27. Defendant United States Small Business Administration (the "Agency") is an independent federal agency created and authorized pursuant to 15 U.S.C. § 633, *et seq*. The SBA maintains its office at 409 Third Street, S.W., Suite 7000, Washington, D.C. 20024-3212.

The SBA Administrator

28. Defendant Jovita Carranza (the "SBA Administrator," together with the Agency, the "SBA") is the Administrator of the Agency, a Cabinet-level position. The SBA Administrator is being sued in her official capacity only, as the Administrator of the Agency. Plaintiffs have authority to sue the SBA Administrator pursuant to 15 U.S.C. § 634(b).

JURISDICTION AND VENUE

(Subject Matter Jurisdiction)

29. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because Plaintiffs' claims arise under the Constitution, laws, or treaties of the United States. Pursuant to 5 U.S.C. §§ 702-704 and 706, Plaintiffs seek judicial review and invalidation under the APA of certain aspects of the SBA's implementation of the Temporary PPP Loan Program and the Section 7(a) SBA Loan Program that are inconsistent with the statutes that the SBA is responsible for administering and with the SBA's governing regulations. The conduct of the SBA at issue is arbitrary, capricious, and contrary to law.

30. This Court also has subject matter jurisdiction pursuant to 28 U.S.C. § 1346, because the named Defendants include the Agency, a federal agency of the United States, making this a "civil action or claims against the United States…founded upon…any Act of Congress, or any regulation of an executive department" within the meaning of the statute.

31. This Court also has jurisdiction pursuant to 28 U.S.C. § 1361 because Plaintiffs' claims against the Administrator are "in the nature of a mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to" Plaintiffs.

32. This Court has authority for judicial review of Agency action pursuant to 5 U.S.C. § 702, which states:

> A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable party. The United States may be named as a defendant in any such action, and a judgment or decree may be entered against the United States; *provided*, that any mandatory or injunctive decree shall specify the Federal officer or officers (by name or by title), and their successors in office, personally responsible for compliance. Nothing herein (1) affects other limitations on judicial review or the power or duty of the court to dismiss any action or deny relief on any other appropriate legal or equitable ground; or (2) confers authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought.

33. The declaratory relief sought by Plaintiffs is authorized by Rule 57 of the Federal Rules of Civil Procedure and the Declaratory Judgment Act, 28 U.S.C. § 2201, which provides that "any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought."

34. The injunctive relief sought by Plaintiffs is authorized by Rule 65 of the Federal Rules of Civil Procedure and the Declaratory Judgment Act, 28 U.S.C. § 2202, which provides that "[f]urther necessary or proper relief on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment."

35. No action, civil or criminal, is pending in any state court involving the Plaintiffs regarding the activities and events at issue in this case.

36. Venue in this Court is proper under 28 U.S.C. § 1391(e) because Defendants, an agency of the United States and its administrator, reside or are deemed to reside in this district.

FACTUAL AND LEGAL BACKGROUND

(The JANI-KING® Franchise System and Proprietary Trademarks)

37. The JANI-KING® Franchise System—consisting of more than 6,000 franchisees worldwide with more than 120 support offices in ten countries—is the largest commercial cleaning franchise system in the world. The types of customers to which the JANI-KING® Franchise delivers commercial cleaning services include office buildings, hospitals, hotels, sporting venues, universities, restaurants, and manufacturing facilities, among others.

38. In the United States, the franchise relationship between the JANI-KING® Franchisor and each JANI-KING® Master Franchise is the subject of a standard form written agreement (the "JANI-KING® Master Franchise Agreement"). Similarly, the franchise relationship between each JANI-KING® Master Franchise in the United States and its JANI-KING® Unit Franchisees is the subject of a standard form written agreement (the "JANI-KING® Unit Franchise Agreement"). Like the franchise agreements of other franchisors, the JANI-KING® Master Franchise Agreements and the JANI-KING® Unit Franchise Agreements (collectively, the "JANI-KING® Franchise Agreements") require each franchisee to comply with the brand standards of the JANI-KING® Trademark Owner (Plaintiff Jani-King International) for the right to be licensed to use the Proprietary JANI-KING® Trademarks and other intellectual property, including trade secrets, upon which the JANI-KING® Franchise System is based (the "JANI-KING® Brand Standards"). The JANI-KING® Brand Standards are set forth

in each JANI-KING® Franchise Agreement and the JANI-KING® Policy and Procedures Manual incorporated by reference in each JANI-KING® Franchise Agreement.

39. In exchange for the royalty payments that the franchisees are required to pay, The JANI-KING® Franchisor provides valuable services to each JANI-KING® Master Franchise, and each JANI-KING® Master Franchise provides valuable services to its JANI-KING® Unit Franchisees. The provision of such services by the franchisor is common in franchising. For example, in the hospitality industry, hotel franchisors operate reservation systems on behalf of all of the franchisees and require individual hotel operators to honor the reservations made through the franchisor's reservation system. Similarly, in the restaurant industry, franchisors control the supply of key ingredients used by their franchisees while mandating the use of certain recipes, standard menus, and sometimes even pricing strategies.

40. In the JANI-KING® Franchise System, The JANI-KING® Franchisor provides support services necessary to ensure that the JANI-KING® Master Franchises and each of their JANI-KING® Unit Franchisees operate their commercial cleaning franchises in accordance with the JANI-KING® Brand Standards. The support services that the JANI-KING® Master Franchise Agreements obligate The JANI-KING® Franchisor to provide to the JANI-KING® Master Franchises include the following: (a) registering and maintaining trademarks and service marks, (b) providing initial training on how to operate a JANI-KING® Master Franchise, (c) providing branded supplies and marketing materials, manuals, and training aids, (d) offering technical assistance and support services, and (e) advertising and marketing the JANI-KING® brand. The support services that the JANI-KING® Unit Franchise Agreements obligate the JANI-KING® Master Franchises to provide to the JANI-KING® Unit Franchisees include provision of: (a) confidential manuals, training aids, and other pertinent information concerning

the JANI-KING® Brand Standards, (b) initial and ongoing training, recommendations, and advice regarding operation of their commercial cleaning franchises in accordance with the JANI-KING® Brand Standards, and (c) promotional materials, sales and service manuals, equipment, and other materials necessary to operate their commercial cleaning franchises in accordance with the JANI-KING® Brand Standards.

41. Pursuant to the JANI-KING® Master Franchise Agreements, each JANI-KING® Master Franchise handles the billing and collection of accounts for which the JANI-KING® Unit Franchisees perform commercial cleaning services and remits such collections to each franchisee, minus a deduction for any royalties or other charges that the franchisee owes to the JANI-KING® Master Franchise. This arrangement improves the cash flow of the JANI-KING® Unit Franchisees because they actually receive payment from the JANI-KING® Master Franchise once the account payments are due—before many of the invoices are even collected. Ultimately, most JANI-KING® Unit Franchisees bear the risk of non-payment because most JANI-KING® Master Franchises "charge back" the franchisees for previously advanced payments if the customer has not paid the invoiced amount within a certain period of time. Pursuant to a program developed by The JANI-KING® Franchisor, however, some JANI-KING® Master Franchises offer the JANI-KING® Unit Franchisees a "no charge back" guarantee—effectively, a form of insurance—in exchange for payment of a premium. Under the "no charge back" guarantee, JANI-KING® Master Franchises thus act as the insurer that individual customers will not pay amounts invoiced on behalf of the JANI-KING® Unit Franchisees. JANI-KING® Unit Franchisees with this form of "insurance" mitigate, but do not eliminate, their risk of loss. Individual JANI-KING® Unit Franchisees without such "insurance" bear the risk of loss of non-payment.

42. With or without a "no charge back" guarantee, the JANI-KING® Franchise System seeks to ensure that franchisees have the wherewithal to comply and in fact do comply with the JANI-KING® Brand Standards that The JANI-KING® Trademark Owner seeks to have associated with the Proprietary JANI-KING® Trademarks. The Proprietary JANI-KING® Trademarks that are sublicensed to JANI-KING® Master Franchises and JANI-KING® Unit Franchisees include the following trademarks that Jani-King International, The JANI-KING® Trademark Owner, has registered on the Principal Register of the United States Patent and Trademark Office:

a. the JANI-KING logo or design mark, Registration No. 1,399,797, registered on July 1, 1986;

b. the JANI-KING word mark, Registration No. 1,472,588, registered on January 12, 1988; and

c. THE KING OF CLEAN, Registration No. 2,599,370, registered on July 23, 2002.

43. The fact that all of the JANI-KING® Franchise Agreements include a license to use the Proprietary JANI-KING® Trademarks establishes one of the three essential definitional elements of a "franchise" within the meaning of the FTC Franchise Disclosure Rule: a license to use, or an association with, a franchisor's trademark. Section 45 of the federal trademark statute, the Lanham Act, permits franchisors to control the quality of the goods and services provided by their franchisees.[2] In fact, the Lanham Act not only gives licensors the ***right*** to control the quality of goods and services sold under their marks, it also imposes an affirmative ***duty*** on

[2] 15 U.S.C. § 1127; *Mid-State Aftermarket Body Parts, Inc. v. MQVP, Inc.*, 466 F.3d 630, 634 (8th Cir. 2006); *Shell Oil Co. v. Commercial Petroleum, Inc.*, 928 F.2d 104, 108 (4th Cir. 1991).

licensors to control, supervise, and ensure the quality of goods and services sold under their marks by licensees. *See, e.g., Kentucky Fried Chicken Corp. v. Diversified Packaging Corp.*, 549 F.2d 368, 387 (5th Cir. 1977); *Dawn Donut Co., Inc. v. Hart's Food Stores, Inc.*, 267 F.2d 358, 367 (2d Cir. 1959). A licensor that fails to discharge this duty forfeits its rights to the mark. *See generally Kentucky Fried Chicken Corp.*, 549 F.2d at 387.

44. Not only does Section 45 of the Lanham Act permit and indeed require the control over use of the Proprietary JANI-KING® Trademarks set forth in the JANI-KING® Franchise Agreements, such control is essential to the success of the JANI-KING® franchise system, as federal courts have long recognized. In the words of one district court, "the cornerstone of a franchise system must be the trademark or trade name of a product," and "[u]niformity of product and control of its quality and distribution . . . causes the public to turn to franchise stores for the product." *Susser v. Carvel Corp.*, 206 F. Supp. 636, 640 (S.D.N.Y 1962), *aff'd*, 332 F.2d 505 (2d Cir. 1964). The Fourth Circuit has similarly recognized that the benefits of being part of a franchise or other branded distribution system include "the right to use a trademark" and "the right to become a part of a system whose business methods virtually guarantee . . . success" because the franchised business "is identified with a network of stores whose very uniformity and predictability attracts customers." *Principe v. McDonald's Corp.*, 631 F.2d 303, 309 (4th Cir. 1980). In that case, which involved the McDonald's franchise system, the Fourth Circuit observed that a franchisee benefits from the uniformity and predictability that results from "pervasive franchisor supervision" over "all facets of the business, from the design of the menu board to the amount of catsup on the hamburgers, nothing is left to chance." *Id.*

45. In other words, control over use of the JANI-KING® Proprietary Marks by JANI-KING® Master Franchises and JANI-KING® Unit Franchisees shows merely that the franchisor

is exercising its rights and responsibilities under Section 45 of the Lanham Act to ensure that the JANI-KING® Proprietary Marks are used only in accordance with the JANI-KING® Brand Standards. It does not establish that the JANI-KING® Franchisor, the JANI-KING® Master Franchises, and the JANI-KING® Unit Franchisees are "affiliates" of one another. Under the federal trademark statute, the control that a trademark licensor is entitled to exercise includes the absolute discretion whether to license or approve the assignment of a license to another person or entity.[3] Yet according to the SOP—which, as an internal SBA "standard operating procedure," does not even have the force of an Agency regulation—a franchise agreement that allows the franchisor to exercise its "sole discretion" whether to approve a sale or transfer, or even a franchise agreement that is silent on the standard for consent, makes the franchisor and franchisee "affiliates" of one another. (SBA SOP 50 10 5 (K), Subpart B, Chapter 2, Paragraph II.D.8(f)). This provision in particular and the SOP in general are thus contrary to federal trademark law. Moreover, this provision of the SOP is at odds with the controlling SBA regulation governing the test for finding affiliation between a franchisor and its franchisees. This regulation is clear that such "affiliation" should not be found where the franchisee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. 13 C.F.R. § 121.301(f)(5) (February 7, 2020).

[3] Because trademark licenses are considered "personal," they cannot be sublicensed or assigned without the consent of the trademark holder. *In re: XMH Corp.*, 647 F.3d 690, 695-96 (7th Cir. 2011). *See also In re: N.C.P. Mktg. Group, Inc.*, 337 B.R. 230, 236-37 (D. Nev. 2005); *Miller v. Glenn Miller Prods.*, 318 F. Supp. 2d 923, 933 (C.D. Cal. 2004); *Tap Publications, Inc. v. Chinese Yellow Pages (N.Y.) Inc.*, 925 F. Supp. 212, 218 (S.D.N.Y. 1996). Federal courts thus recognize that "intangible factors" rightly play an important role in the decision to license a trademark to a particular franchisee. *Equip. Mfrs. Inst. v. Janklow*, 300 F.3d 842, 854 (8th Cir. 2002). "[S]ince the licensor-trademark owner has the duty to control the quality of goods sold under its mark, it must have the right to pass upon the abilities of new potential licensees." *Tap Publications, Inc. v. Chinese Yellow Pages (N.Y.) Inc.*, 925 F. Supp. 212, 218 (S.D.N.Y. 1996) (quotation omitted).

46. The SOP has never been the subject of the notice-and-comment rulemaking necessary to permit the SOP to function as a "legislative rule" binding on the public at large and substantially affecting the rights of those subject to the SBA's authority. And the SOP is not consistent with the provisions of any statute authorizing the SBA to enforce either the Section 7(a) SBA Loan Program or the Temporary PPP Loan Program established by the CARES Act.

(The Administrative Procedure Act)

47. The APA authorizes federal agencies to promulgate rules and governs the process by which federal agencies develop and issue regulations. The APA defines a "rule" as "an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy[.]" 5 U.S.C. § 551(4). Federal agencies create two types of rules: "legislative" and "interpretive." Neither term is expressly defined by the APA.

48. Rules that carry the force and effect of law are known as legislative rules. In contrast, non-legislative rules—such as interpretive rules and policy statements—lack the force and effect of law. *See, e.g.*, *Appalachian Power Co. v. EPA*, 208 F.3d 1015, 1020, (D.C. Cir. 2000) ("Only 'legislative rules' have the force and effect of law ... A 'legislative rule' is one the agency has duly promulgated in compliance with the procedures laid down in the statute or in the Administrative Procedure Act."); *Nat'l Mining Ass'n v. McCarthy*, 758 F.3d 243, 250 (D.C. Cir. 2014) ("Legislative rules have the 'force and effect of law' and may be promulgated only after public notice and comment."). Interpretive rules merely interpret and clarify an existing statute or regulation do not create new laws, rights, or duties. *White v. Shalala*, 7 F.3d 296, 303 (2d Cir. 1993).

49. The APA generally requires that, to become effective, a legislative rule must go through what is known as notice-and-comment rulemaking. This is a lengthy process in which the public is given an opportunity to comment on a proposed version of the rule and the agency

responds to the comments. 5 U.S.C. § 553(d)(2). The public comment process sometimes significantly influences the content of legislative rules. *See, e.g., Meriden Cmty. Action Agency v. Shalala*, 880 F. Supp. 882, 885 (D.D.C. 1995), aff'd, 80 F.3d 524 (D.C. Cir. 1996) (explaining that, under the APA, an agency "promulgating regulations under informal rule-making procedures must provide notice to public of proposed rules, give public opportunity to comment on proposed rules, and, after considering relevant matters presented, issue rules along with concise general statement of their basis and purpose.").

50. A rule cannot be considered non-legislative if it "substantially affects the rights of those over whom the agency exercises authority." *Pickus v. United States Bd. of Parole*, 507 F.2d 1107, 1113-14 (D.C. Cir. 1974) ("This category … should not be deemed to include any action which goes beyond formality and substantially affects the rights of those over whom the agency exercise authority.").

(Statutes Governing the SBA's Administration of the Section 7(a) SBA Loan and Temporary PPP Loan Programs)

51. The SBA's primary source of its authority is the Small Business Act, 15 U.S.C. § 631 *et seq*. The regulations by which the SBA implements its statutory authority are codified in Title 13 of the Code of Federal Regulations after publication in the Federal Register. The SBA also issues guidance documents for compliance with its regulations and the programs that it administers. These guidance documents include publicly available internal SBA Standard Operating Procedures (such as the SOP at issue in this case), Policy Notices, Procedural Notices, and other general guidance.

52. Before enactment of the CARES Act, the SBA's primary program for providing financial assistance to small businesses was through its authorization to provide loan assistance to small business concerns under Sections 7(a) and 7(b) of the Small Business Act, 15 U.S.C. §

636(a). The CARES Act simply amended Section 7(a) of the Small Business Act to establish the Temporary PPP Loan Program on a short-term, emergency basis.

53. The Section 7(a) SBA Loan Program provides financing for general business purposes. To qualify for Section 7(a) SBA Loan Program loans other than the Temporary PPP Loan Program loans available under the CARES Act, an applicant must: (i) be an operating business organized for profit that is located in the United States (13 C.F.R. § 120.100(a)-(c)); (ii) meet the size standards for a "small" business set forth under the statute and SBA rules, usually stated in terms of number of employees, or average annual receipts (15 U.S.C. § 632(a)(2); 13 C.F.R. § 120.100(d); 13 C.F.R. Part 121); and (iii) demonstrate that the desired credit is not available elsewhere on reasonable terms. 15 U.S.C. § 632(h); 13 C.F.R. §§ 120.100(e), 120.101.

(Ineligible Businesses)

54. The SBA's implementing regulations designate eighteen discrete categories of businesses as ineligible for SBA business loans. 13 C.F.R. § 120.110. Examples of ineligible businesses include, among others, financial businesses primarily engaged in the business of lending, such as banks, finance companies, and factors; businesses that derive more than one-third of gross annual revenue from legal gambling activities (*i.e.*, casinos); and government-owned entities. 13 C.F.R. § 120.110 (b), (g), and (j). The discrete categories of "ineligible businesses" also include "[p]assive businesses owned by developers and landlords that do not actively use or occupy the assets acquired or improved with the loan proceeds (except Eligible Passive Companies under § 120.111)." 13 C.F.R. § 120.110(c).

55. No entity in the JANI-KING® Franchise System is within any of the eighteen categories of businesses designated by regulation as ineligible for SBA business loans. Nevertheless, the SBA has taken the position that JANI-KING® Master Franchises are "passive."

The regulation cited by the SBA as the basis for this position is 13 C.F.R. § 120.110(c) ("Section 120.110(c)"). On its face, Section 120.110(c) does not apply to the JANI-KING® Franchise System. Section 120.110(c) limits the "passive business" exclusion from eligibility for Section 7(a) loans to "passive businesses ***owned by developers and landlords*** that do not actively use or occupy the assets acquired or improved with the loan proceeds." 13 C.F.R. § 120.110(c) (emphasis added).

56. The regulation identifies a specific subcategory of "passive businesses"—so-called "Eligible Passive Companies"—that constitute a special exception to the exclusion. The definition of "Eligible Passive Companies" reinforces the principle that a "passive business" is one that leases real or personal property to a related operating company. Section 120.111 provides: "An Eligible Passive Company must use loan proceeds only to acquire or lease, and/or improve or renovate, real or personal property (including eligible refinancing), that it leases to one or more Operating Companies . . . ." 13 CFR § 120.111

57. The plain text of the regulation makes clear that a necessary element of this discrete category of ineligible "passive" businesses is owning and leasing of real or personal property to other entities for beneficial use by the other entities. The JANI-KING® Master Franchises are not businesses "owned by developers and landlords that do not actively use or occupy the assets acquired or improved through the loan proceeds." They do not acquire real or personal property to lease to JANI-KING® Unit Franchisees (or any other entities).

58. With respect to loan proceeds obtained through the Temporary PPP Loan Program, the JANI-KING® Master Franchises would be statutorily required to use the loan proceeds only to pay their employees and certain other discrete operational expenses (*e.g.*, rent and utility payments). No JANI-KING® Master Franchise or Unit Franchisee would be able to

use PPP loan proceeds to "acquire or improve" assets of any kind (let alone the type of real estate assets referenced in the regulation).

59. In a 1995 rulemaking clarifying the "Eligible Passive Company" exception, the SBA explained that "businesses engaged in regular business activities" are not to be considered "passive businesses" because "passive businesses" are those that "do not engage in regular and continuous activity as an operating business." 60 Fed. Reg. 64356, 64360 (Dec. 15, 1995). The Carollo Declaration (ECF 6-3) establishes that Ohio Services is not a "passive business" that simply receives royalties without engaging in independent economic activity or providing services to its unit franchisees. As detailed in the Carollo Declaration, Ohio Services' employees actively assist JANI-KING® Unit Franchisees in marketing and sales and provide critical "back-office" services such as billing and collections, with Ohio Services assuming the risk of non-collection for some of its franchisees.

60. Accordingly, any contention by the SBA that any independently owned master franchise or unit franchisee in the JANI-KING® Franchise System is ineligible as a "passive business" under 13 C.F.R. § 120.110(c) is at odds with the plain text of the regulation. Such a contention by the SBA constitutes an arbitrary and capricious application of 13 C.F.R. § 120.110(c) that has resulted in the unlawful deprivation of Plaintiffs' opportunity to receive a Temporary PPP Loan Program loan for the benefit of their employees.

(Size Determination and Affiliation)

61. The Small Business Act defines a "small-business concern" as "one which is independently owned and operated and which is not dominant in its field of operation." 15 U.S.C. § 632(a)(1). The statute authorizes the Administrator to establish "size standards" to determine whether a business is a "small business concern." *See id.* § 632(a)(2)(A) ("In addition

to the criteria specified in paragraph (1), the Administrator may specify detailed definitions or standards by which a business concern may be determined to be a small business concern for the purposes of this chapter or any other Act."). Such standards "may utilize number of employees, dollar volume of business, net worth, net income, a combination thereof, or other appropriate factors." *Id.* § 632(a)(2)(B).

62. In assessing the size of a business concern, the SBA has long applied so-called "affiliation" rules that require a business concern to aggregate its resources with those of its "affiliates" when assessing whether the business concern and its affiliates collectively satisfy the relevant size standard. The affiliation principles for the SBA's business loan program are set forth in its regulations at 13 C.F.R. § 121.301(f). For franchises, the relevant regulation specifically provides that the franchisor-franchisee relationship will not be considered in making an affiliation determination so long as the applicant franchisee "has the right to profit from its efforts and bears the risk of loss commensurate with ownership." *See* 13 C.F.R. § 121.301(f)(5) (February 7, 2020 version). Accordingly, the only affiliation determination that the SBA should be undertaking to assess whether the members of the JANI-KING® Franchise System are affiliated by virtue of their respective franchise agreements is to assess whether the franchisees have the right to profit from their efforts and bear the risk of loss commensurate with ownership.

63. Those are the only two relevant inquiries under the SBA's regulations when assessing whether affiliation arises due to a franchise or license agreement. The SBA regulations do not mandate that a "franchise" be listed in the Directory to qualify for any SBA loan—not under the Section 7(a) SBA Loan Program, and certainly not under the Temporary PPP Loan Program. The only place such a purported "mandate" appears is in the SBA's internal SOP, which has never been the subject of the notice-and-comment rulemaking necessary for it to

function as a "legislative rule" binding on the public at large and substantially affecting the rights of those subject to the SBA's authority.

(The CARES Act)

64. The CARES Act was signed into law on March 27, 2020. Title I, Section 1102 of the CARES Act amends the Small Business Act to establish the Temporary PPP Loan Program and allows such loans to any qualifying small business. The portions of the CARES Act that establish the Temporary PPP Loan Program are attached as **Exhibit A**.

65. The CARES Act instructs the SBA to promulgate rules to implement the Temporary PPP Loan Program and makes the SBA responsible for administering the Temporary PPP Loan Program. 15 U.S.C. § 636(a)(36)(F)(ii).

66. Under the Temporary PPP Loan Program established by the CARES Act, "any business concern . . . shall be eligible to receive a covered loan if the business concern . . . employs not more than . . . 500 employees." 15 U.S.C. § 636(a)(36)(D)(i). Under the CARES Act, eligibility for a loan under the Temporary PPP Loan Program does ***not*** require a "franchise" to be listed in the Directory. The CARES Act does not require any eligible small business, regardless of whether it is a "franchise," to be listed in the Directory to qualify for a loan under the Temporary PPP Loan Program.

67. In evaluating the eligibility of a borrower for a PPP loan, a lender is to consider whether the borrower: (1) was in operation on February 15, 2020; (2) had employees for whom the borrower paid salaries and payroll taxes; or (3) paid independent contractors. 15 U.S.C. § 636(a)(36)(F)(ii)(II).

68. The SBA has issued several interim rules to implement the Temporary PPP Loan Program, as well as informal guidance to borrowers and lenders regarding the program. The

SBA issued its first interim rule on April 1, 2020 ("First PPP Rule"), which was subsequently published in the Federal Register on April 15, 2020. 85 Fed. Reg. 20811 (Apr. 15, 2020). In the First PPP Rule, the SBA confirmed that the Temporary PPP Loan Program would be implemented on a "first come, first served basis" until funds are exhausted.[4] *Id.* at 20813. The First PPP Rule also referred specifically to 13 C.F.R. § 120.110 as the relevant resource for an applicant to consult to determine whether a business is ineligible for a Temporary PPP Loan Program loan: "Businesses that are not eligible for PPP loans are identified in 13 C.F.R. 120.110." *Id.* at 20812. Nothing in 13 C.F.R. § 120.110 states that a franchised business operating pursuant to a franchise agreement that is not listed in the Directory is ineligible to receive SBA financial assistance. Nor does 13 C.F.R. § 120.110 identify as "ineligible" a franchise operated pursuant to a master franchise agreement or similar types of franchise agreement whereby the franchisee has the right to develop unit franchises within its assigned territory.

69. The operative version of the SBA's regulation regarding size standards and affiliation principles for the Section 7(a) SBA Loan Program is the pre-February 10, 2020 version of 13 C.F.R. § 121.301. That is because Congress, through the CARES Act, decreed that the amendments and additions the SBA made to 13 C.F.R. § 121.301 through the Revoked Affiliation Rule on February 10, 2020 are "permanently rescinded and shall have no force or effect." The pre-February 10, 2020 version of 13 C.F.R. § 121.301 is attached as **Exhibit B**.

[4] The CARES Act initially set aside $349 billion dollars for the Temporary PPP Loan Program. On April 24, 2020, President Trump signed the Paycheck Protection Program and Health Care Enhancement Act that allotted an additional $320 billion for the Temporary PPP Loan Program.

70. The SBA has also authored certain internal "standard operating procedures" for use by SBA personnel. The SOP relevant to the Section 7(a) SBA Loan Program is attached as **Exhibit C**. The SOP specifically states: "If the Applicant's brand meets the FTC definition of a franchise, it must be on the Directory in order to obtain SBA financing." *See* franchise sections of SBA SOP 50 10 5(K) (Subpart B, Chapter 2, Paragraph II.D.8.b). Again, the foregoing provision of the SOP finds no support in, and in fact contradicts, the statutes establishing the Section 7(a) SBA Loan Program and the Temporary PPP Loan Program and the SBA regulations issued pursuant to such statutes.

71. The SBA does have an appeal process whereby an applicant can appeal the SBA's decision not to list its franchise agreement in the Directory. The SBA has previously denied such appeals and has made clear since establishment of the Temporary PPP Loan Program—funding for which is likely to be exhausted soon—that the JANI-KING® Franchise Agreements are ineligible for listing in the Directory. At this juncture, further appeal would therefore be futile.

(The SBA's Repeated Refusals to List JANI-KING® Franchise Agreements in the Directory and Denials of PPP Loans to Members of the JANI-KING® Franchise System)

72. In 2015, efforts to secure listing of the JANI-KING® Franchise Agreements in the Directory were rejected by the SBA. Subsequent efforts by JKF to secure such a listing were unsuccessful. At the time, listing in the Directory was not a prerequisite for lending under the Section 7(a) SBA Loan Program. That relatively recent requirement did not present significant problems for the JANI-KING® Franchise System before the COVID-19 pandemic. It did not become an issue until early April of this year, when the SBA announced that (i) listing in the Directory would be a prerequisite for assistance under the Temporary PPP Loan Program established by the CARES Act; (ii) SBA staff deemed the JANI-KING® Franchise Agreements

to be ineligible for listing in the Directory; and (iii) members of the JANI-KING® Franchise System could not participate in the Temporary PPP Loan Program.

73. On April 3, 2020, lenders began accepting applications under the Temporary PPP Loan Program. To the best of JKF's knowledge, every application for a loan under the Temporary PPP Loan Program submitted by a JANI-KING® Unit Franchisee has been rejected altogether or approved on discriminatory terms that are inconsistent with the benefits of the Temporary PPP Loan Program that are supposed to be available under the CARES Act.

The Tri-State JANI-KING® Unit Franchisee

74. The Tri-State JANI-KING® Unit Franchisee owns seven different JANI-KING® Unit Franchises in Louisiana, Mississippi, and Alabama. Jerry A. Snyder, President of The Tri-State JANI-KING® Unit Franchisee, was concerned about not laying off any of the franchisee's approximately 20 full-time and 80 part-time employees. The loss of an employee would harm the employee during this time of increasing unemployment and would also harm The Tri-State JANI-KING® Unit Franchisee because of the costs associated with training people and the loss of trusted employees. The Tri-State JANI-KING® Unit Franchisee has experienced a 35 to 40 ercent decrease in hours worked during the COVID-19 pandemic. Because there is not enough work to keep its employees paid, Mr. Snyder has funded approximately $20,000 of payroll costs out of his own pocket.

75. On April 3, 2020, Mr. Snyder submitted a Borrower Application Form under the Temporary PPP Loan Program to Community Bank of Mississippi, a lender approved by the SBA. One of the benefits of participating in the Temporary PPP Loan Program as set forth in the CARES Act is that, if the loan proceeds are used for a discrete group of costs during an eight-week period following the loan, the PPP loan can be forgiven. The Tri-State JANI-KING® Unit

Franchisee intended to keep its employees paid at the amounts they were paid before the pandemic.

76. The Tri-State JANI-KING® Unit Franchisee's application for a PPP loan closed and was funded by the lender on April 9. 2020. The Tri-State JANI-KING® Unit Franchisee received a loan of $143,000 on April 17, 2020. After the closing, however, the SBA notified the lender that the SBA would deny forgiveness of the loan under the Temporary PPP Loan Program because The Tri-State JANI-KING® Unit Franchisee's franchise agreement is not listed in the Directory. Fearful of being accused of having wrongfully received the funds, the Tri-State JANI-KING® Unit Franchisee returned the much needed funds to the lender.[5]

The Ohio JANI-KING® Master Franchise

77. On April 3, 2020, Plaintiff Ohio Services submitted an application for a PPP loan to a local lender with which Ohio Services has a longstanding banking relationship, Erie Bank. A copy of Ohio Services' PPP loan application to Erie Bank is attached as **Exhibit D**.

78. In response to Ohio Services' PPP loan application, on April 6, 2020, Joe Carollo, President of Ohio Services, received the email attached as **Exhibit E** from Wes Gillespie, President of Erie Bank, stating:

> Joe, please call me first thing in the morning. I believe we have a problem with your PPP application. The lender's application ask[]s if the business is a Franchise, if so it must be registered and listed in the SBA Franchise Directory with a Franchise Identification code, if the answer is no, the business may be ineligible for the PPP program. Is Jani-King listed in the SBA Franchise directory?

[5] Plaintiffs are aware of at least one other JANI-KING® Unit Franchisee, E&M Willis, Inc., that had an experience similar to that of the Tri-State JANI-KING® Unit Franchisee. E&M Willis, Inc. is also based in Mississippi and applied for a PPP loan in the amount of $38,000. Approval for the loan was withdrawn before closing because the franchise agreement was not listed in the Directory.

79. The following day, April 7, 2020, Mr. Carollo spoke with Mr. Gillespie about Ohio Services' PPP loan application. During that conversation, Mr. Carollo informed Mr. Gillespie that the JANI-KING® franchise agreement was not listed in the SBA Franchise Directory but that JKF was seeking to have it listed. Shortly thereafter, Mr. Carollo received the email from Mr. Gillespie attached as **Exhibit F** stating in part:

> Joe, I am sorry, both our 3rd party processor as well as SBA told us that as the current program is written, you would have to be on the SBA Franchise list or we can't submit the application. I'm really sorry, but it's out of my control on my end because it's right on the lender's certified application that we have to submit for the loan guarantee. I'm trying to figure out a way to do it, but don't see an option right now. I would have called you but on a Zoom meeting right now, I can call you later.

JKF's Communications with the SBA's Chief Franchise Counsel

80. On April 7, 2020, Plaintiff JKF participated in a conference call through the International Franchise Association ("IFA") with Stephen Olear, the SBA's Chief Franchise Counsel. During that call, Mr. Olear confirmed that the SBA would not consider applications under the Temporary PPP Loan Program for any "franchise" not listed in the Directory. Mr. Olear has since stated that the business model of commercial cleaning franchises generally, specifically including the JANI-KING® Franchise System, makes them ineligible for listing in the Directory and for assistance under the Temporary PPP Loan Program.

81. Previously, on April 2, 2020, the JANI-KING® Master Franchise in the Washington, D.C. area—Jani-King of Washington, D.C., Inc. ("The D.C. JANI-KING® Master Franchise"—sought to have the JANI-KING® Franchise Agreement that it uses with its JANI-KING® Unit Franchisees listed in the Directory. The JANI-KING® Unit Franchise Agreement used by The D.C. JANI-KING® Master Franchise is the same form that all JANI-KING® Master Franchises nationwide use with their JANI-KING® Unit Franchisees.

82. On April 8, 2020, the SBA's Chief Franchise Counsel notified the individual who had submitted the listing request on behalf of The D.C. JANI-KING® Master Franchise that its agreement was ineligible to be listed in the Directory and that its JANI-KING® Unit Franchisees were ineligible for loans under the Temporary PPP Loan Program.

83. Previously, on April 5, 2020, Plaintiff Jani-King International—which has fewer than 500 employees—applied for a loan under the Temporary PPP Loan Program. Much to the surprise of Jani-King International in view of prior communications with the SBA and the fate of applications submitted by other members of the JANI-KING® Franchise System, Jani-King International's loan was funded on April 13, 2020. Presumably the funding will be subject to the same advance determination by the SBA that the loan is not eligible for the forgiveness provisions of the Temporary PPP Loan Program regardless of what the CARES Act says.

84. On April 27, 2020, the SBA sent the email attached as **Exhibit G** stating the unit franchise agreement submitted by The D.C. JANI-KING® Master Franchise would be listed in the Directory for purposes of the Temporary PPP Loan Program only. While welcome news, this missive was contrary to the SBA's April 8, 2020 communication and contrary to the treatment of other members of the JANI-KING® Franchise System that are parties to a substantively similar form of JANI-KING® Unit Franchisee Agreement.

The SBA's Selective Waiver of 13 C.F.R. § 120.110 Ineligibility

85. On April 24, 2020, the SBA issued its fourth interim rule implementing the Temporary PPP Loan Program (the "Ineligibility Waiver Rule"), a copy of which is attached as **Exhibit H**. In the Ineligibility Waiver Rule, the SBA expressly overrode the existing regulatory designation in 13 C.F.R. § 120.110 of two types of businesses that previously were ineligible for SBA business loans. The Ineligibility Waiver Rule found that the broad remedial purposes of the CARES Act warrant allowing such "ineligible businesses" to apply for and receive Temporary

PPP Loan Program loans. The SBA first waived the ineligibility under 13 C.F.R. § 120.110(j) for government-owned businesses, thereby permitting government-owned hospitals to apply for and receive Temporary PPP Loan Program loans. The SBA stated that it had "determined that this exception to the general ineligibility of government-owned entities, 13 CFR 120.110(j), is appropriate to effectuate the purposes of the CARES Act." **Exhibit H** at 7. Nowhere in the PPP provisions of the CARES Act did Congress specifically identify government-owned hospitals as eligible. There is no reference to government-owned entities within 15 U.S.C. § 636(a)(36)(D)—the section titled "Increased Eligibility for Certain Small Businesses and Organizations"—or anywhere else in Section 1102 of the CARES Act. Thus, the SBA relied not on specific language within the CARES Act but on a broad interpretation of its remedial intent to find that the SBA should not apply the regulatory ineligibility designation of 13 C.F.R. 120.110 to certain prospective applicants for PPP loans.

86. The SBA next waived ineligibility under 13 C.F.R. § 120.110(g) for businesses deriving more than one-third of gross annual revenue from legal gambling activities so as to permit casinos to apply for and receive PPP funds. Casinos, as businesses deriving more than one-third of their revenues from legal gambling activities, are categorically ineligible for SBA financial assistance under the Section 7(a) SBA Loan Program. The SBA recognized that the CARES Act's broad remedial purposes warranted disregarding casinos' categorical ineligibility for a typical loan under the Section 7(a) SBA Loan Program to allow casinos to apply for Temporary PPP Loan Program funds so long as they meet the simplified eligibility standard set forth by Congress of having no more than 500 employees. In fact, the SBA asserted that 13 C.F.R. § 120.110 is "inapplicable to PPP loans," at least with respect to businesses that would otherwise be ineligible under the "revenues from legal gambling" category: "A business that is

otherwise eligible for a PPP Loan is not rendered ineligible due to its receipt of legal gaming revenues, and 13 CFR 120.110(g) is inapplicable to PPP loans." **Exhibit H** at 7.

87. The SBA explained its basis for disregarding the ineligibility provisions of 13 C.F.R. § 120.110 in the context of the PPP, at least with respect to casinos, based on "the policy aim of making PPP loans available to a broad segment of U.S. businesses." *Id.* That rationale would apply with equal force to making PPP loans available to franchises not listed in the Directory, or to the members of the JANI-KING® Franchise System that are otherwise eligible under the 500-or-fewer employee standard set forth in the CARES Act. The SBA has not articulated a rational basis for ignoring regulatory ineligibility for SBA financial assistance for some businesses (such as government-owned hospitals and casinos) and not for small franchised businesses in the commercial cleaning industry (to the extent that the SBA contends that members of the JANI-KING® Franchise System are purportedly ineligible under one of the categories set forth in 13 C.F.R. § 120.110, such as 13 C.F.R. § 120.110(c)).

Irreparable Harm Faced By the JANI-KING® Franchise System

88. The SBA's refusal to list JANI-KING® Franchise Agreements in the Directory and to approve virtually all Temporary PPP Loan Program applications on behalf of members of the JANI-KING® Franchise System threatens Plaintiffs and indeed the entire JANI-KING® Franchise system with irreparable harm. In the case of at least some JANI-KING® Master Franchises and JANI-KING® Unit Franchisees, the potential consequences may include the very closures of their businesses and layoffs of employees that the CARES Act in general and the Temporary PPP Loan Program in particular were intended to avoid.

89. Because of the COVID-19 pandemic, the risk that customers of the JANI-KING® Unit Franchisees will not pay their bills has already increased and is likely to increase even further the longer that many businesses are shut down. Some types of customers (such as

hospitals and grocery stores) are using more cleaning services now than previously. Overall, however, demand for commercial cleaning services has decreased as many types of businesses—such as shopping malls, office buildings, movie theaters, bowling alleys, hotels, and sit-down restaurants, among others—have shut down. Some businesses that have heretofore been open during the pandemic, such as car dealerships, may well shut down as sales plummet. For many customers that typically use commercial cleaning services, the longer they are shut down, the more likely it is that the closures will become permanent and/or result in bankruptcy filings. Already, various members of the JANI-KING® Franchise System have seen a significant increase in the age of their accounts receivable. Even businesses that remain open are finding it increasingly difficult to pay their bills.

90. This harm is illustrated by The Tri-State JANI-KING® Unit Franchisee, which intended to use funding from the Temporary PPP Loan Program to pay its employees at pre-pandemic levels. The SBA, however, made the arbitrary and capricious determination that the Tri-State JANI-KING® Unit Franchisee did not qualify for loan forgiveness under the Temporary PPP Loan Program. Because of the uncertainty created by the SBA's implementation of the Temporary Loan Program, the Tri-State JANI-KING® Unit Franchisee was not able to use the funding it received and will be unable to pay its employees at pre-pandemic levels.

91. Without healthy JANI-KING® Unit Franchisees, JANI-KING® Master Franchises would be severely damaged and may not remain viable. Without viable JANI-KING® Master Franchises, the very survival of Jani-King International and JKF is in jeopardy.

92. Because the funds available under the Temporary PPP Loan Program are for a finite amount, each day that Plaintiffs and other members of the JANI-KING® Franchise System

are barred from participating in the Temporary PPP Loan Program on a non-discriminatory basis threatens them with irreparable harm.

COUNT ONE

(Violation of Administrative Procedure Act)

93. Plaintiffs incorporate herein by reference each and every paragraph above as though fully set forth herein.

94. The SBA's imposition of a new threshold criterion for the eligibility of businesses operating under a franchise agreement to receive SBA financial assistance is arbitrary, capricious, and contrary to the controlling regulations, which impose no requirement for a small franchised business to have its franchise agreement listed in the Directory. The SBA is unlawfully applying a requirement found only in its own internal "standard operating procedures" to deny needed financial assistance to Plaintiffs and others.

95. The SBA's decree that no small franchised business can receive a PPP loan, a Section 7(a) loan, or any other SBA financial assistance unless its franchise agreement is listed in the Directory is a legislative rule that substantially affects the rights of small franchise businesses. Because the SBA has not adopted this legislative rule through the notice-and-comment rulemaking required by the APA, it cannot be invoked—at least not lawfully—to bar eligibility for SBA financial assistance to Plaintiffs, other members of the JANI-KING® Franchise System, other commercial cleaning franchises, and small franchised businesses in general.

96. As part of its unlawful effort to foist the SOP on franchised businesses, lenders, and others outside the Agency, the SBA has—since passage of the CARES Act—issued the Paycheck Protection Program Lender Application Form attached as **Exhibit I**. Question "G" on that application form is entitled "Franchise/License/Jobber/Membership or Similar Agreement" and asks

the following "yes" or "no" question: "The Applicant has represented to the Lender that it is a franchise that is listed in the SBA's Franchise Directory." Above that question, the application form states in parentheses: "*If applicable and no, the loan cannot be approved*." (italics in original). Both the SOP and the Lender Application Form constitute final agency action in violation of the APA. The APA provides that the action of each authority of the Government of the United States, including the SBA, is subject to judicial review except where there is a statutory prohibition on review or where agency action is committed to agency discretion by law. In this case, there is no indication that Congress sought to prohibit or restrict judicial review of SBA actions. Thus, a judicial review of the SBA's conduct is appropriate.

97. If the SBA contends that one or more members of the JANI-KING® Franchise System are ineligible for SBA financial assistance generally and PPP loans in particular because they are "passive" businesses under 13 C.F.R. § 120.110(c) the SBA's position is arbitrary, capricious, and contrary to the plain text of the regulation. To be a "passive business" as defined by 13 C.F.R. § 120.110(c), a business must—under the plain language of the regulation—be "owned by developers and landlords that do not actively use or occupy the assets acquired or improved with the loan proceeds." No member of the JANI-KING® Franchise System falls within that specific regulatory definition. Any attempt by the SBA to expand that definition beyond the plain text of the regulation to reach members of the JANI-KING® Franchise System would constitute a legislative rule that could not become effective without first undergoing the notice-and-comment rulemaking required by the APA.

98. Any contention that members of the JANI-KING® Franchise System are ineligible businesses under 13 C.F.R. § 120.110(c) is arbitrary, capricious, and irrational because the SBA's Ineligibility Waiver Rule states that 13 C.F.R. § 120.110 ineligibility is "inapplicable

to the PPP." The SBA has already waived ineligibility under 13 C.F.R. § 120.110 for government-owned businesses and for casinos based on the broad remedial purposes of the CARES Act and the stated "policy aim of making PPP loans available to a broad segment of U.S. businesses." Under the circumstances, the SBA lacks a rational basis to invoke 13 C.F.R. § 120.110(c) as a basis for denying PPP loan eligibility to members of the JANI-KING® Franchise System.

99. As a direct and proximate result of the above foregoing conduct by the SBA in contravention of its duly promulgated regulations and the CARES Act, members of the JANI-KING® Franchise System (including Plaintiffs) have been and will be excluded from PPP loans and will be unable to participate in the Temporary PPP Loan Program or receive all of the program benefits that Congress intended for all small businesses—including franchised businesses—experiencing economic hardship and employee layoffs or furloughs due to the COVID-19 pandemic.

COUNT TWO

(Declaratory Judgment)

100. Plaintiffs incorporate herein by reference each and every paragraph above as though fully set forth herein.

101. The Declaratory Judgment Act, 28 U.S.C. § 2201, authorizes this Court to "declare the rights and other legal relations of any interested party" to a case or controversy over which the Court has subject matter jurisdiction.

102. As a result of the SBA's enforcement of eligibility standards against members of the JANI-KING® Franchise System that are not found in, and are in conflict with, the plain terms of its duly promulgated regulations, and the SBA's resulting refusal to permit franchised businesses (including members of the JANI-KING® Franchise System) to apply for a PPP loan

if they are not listed in the Directory, a case or controversy exists between Plaintiffs and Defendants.

103. Accordingly, Plaintiffs respectfully request this Court to issue a declaratory judgment holding as follows:

a The SBA exceeded its authority by requiring that the JANI-KING® Franchise Agreement be listed in the Directory as a prerequisite for members of the JANI-KING® Franchise System to apply for PPP loans under the CARES Act, making the requirement void and unenforceable as to Plaintiffs and other members of the JANI-KING® Franchise System.

b The SBA acted arbitrarily and capriciously in determining that Plaintiffs and other members of the JANI-KING® Franchise System are "passive" businesses ineligible to participate in the Temporary PPP Loan Program in particular and the Section 7(a) SBA Loan Program in general.

c The SBA cannot enforce the heightened eligibility requirements for franchised businesses contained in the SBA's internal SOP to the extent such enforcement would preclude Plaintiffs and other members of the JANI-KING® Franchise System from applying for a PPP loan or a Section 7(a) SBA Loan Program loan.

d To comply with the law, the SBA's SOP and the Lender Application for the Temporary PPP Loan Program must be amended to delete the requirement that a franchise agreement be listed in the Directory as a prerequisite for franchised businesses to participate in the Section 7(a) SBA Loan Program and the Temporary PPP Loan Program.

e To comply with the law, the SBA must advise lenders to accept PPP and Section 7(a) loan applications from franchised businesses regardless of whether their franchise agreements are currently listed in the Directory.

f Plaintiffs are eligible to receive funding and loan forgiveness under the Temporary PPP Loan Program.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

A. Issue orders granting a permanent injunction enjoining the SBA, and all persons bound by Fed. R. Civ. P. 65(d)(2), from enforcing or using SBA SOP 50 10 5(K) or any other rule or regulation to refuse to accept a PPP loan application from a franchise that is not listed in the Directory;

B. Issue orders determining that the SBA lacked authority to declare members of the JANI-KING® Franchise System to be "passive" business and acted arbitrarily and capriciously in determining that JKF, Ohio Services, and The Tri-State JANI-KING® Unit Franchisee are passive businesses;

C. As part of those orders, order the SBA, including all persons bound by Fed. R. Civ. P. 65(d)(2), to notify, as expeditiously as possible, all SBA lending banks to immediately discontinue using and implementing SBA SOP 50 10 5(K) to bar SBA lenders from accepting PPP loan applications from a franchise that is not listed in the Directory as criteria for determining PPP loan application acceptability and eligibility;

D. Also as part of those orders, order the SBA to determine that members of the JANI-KING® Franchise System with fewer than 500 employees are eligible borrowers under the PPP Loan Program;

E. Enter an award of attorneys' fees and costs against the SBA and in favor of Plaintiffs; and

F. Enter such other and further relief as this Court may find to be warranted in these circumstances.

Dated: April 27, 2020

Respectfully submitted,

JANI-KING INTERNATIONAL, INC.;
JANI-KING FRANCHISING, INC.;
OHIO SERVICES–CLE, LLC
dba JANI-KING OF CLEVELAND, and
A AND A ENTERPRISES dba JANI-KING

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