

1 PHILIP J. SMITH (SBN 232462)  
psmith@constangy.com  
2 JEFFREY M. ROSIN (admitted *pro hac vice*)  
jrosin@constangy.com  
3 CONSTANGY, BROOKS, SMITH & PROPHETE, LLP  
4 50 California Street, Suite 1625  
San Francisco, CA 94111  
5 Telephone: 415-918-3000  
Facsimile: 415-918-3005  
6

7 Attorneys for Defendant  
8 JAN-PRO FRANCHISING INTERNATIONAL, INC.

9 **UNITED STATES DISTRICT COURT**  
10 **NORTHERN DISTRICT OF CALIFORNIA**

11 GLORIA ROMAN, GERARDO VASQUEZ,  
JUAN AGUILAR,

12 Plaintiffs,

13 vs.

14 JAN-PRO FRANCHISING  
15 INTERNATIONAL, INC.

16 Defendant.

Case No. 3:16-cv-05961-WHA

**JAN-PRO FRANCHISING  
INTERNATIONAL, INC.'S ANSWER TO  
PLAINTIFFS' SECOND AMENDED  
COMPLAINT**

[Assigned to Hon. William Alsup, Ctrm. 8, 19<sup>th</sup>  
Fl.]

1 **ANSWER TO SECOND AMENDED COMPLAINT AND AFFIRMATIVE DEFENSES**

2 Defendant Jan-Pro Franchising International, Inc. (“JPI”), by and through its attorneys  
3 Constangy, Brooks, Smith & Prophete, LLP, hereby submits its Answer to the Second Amended  
4 Complaint of Gloria Roman, Gerardo Vazquez, and Juan Aguilar, and the individuals they seek  
5 to represent (“Plaintiffs”). JPI denies all the allegations in the Second Amended Complaint  
6 unless expressly admitted hereto. JPI responds to the numbered paragraphs in Plaintiffs’  
7 Second Amended Complaint and states its affirmative defenses as follows:

8 1. Paragraph 1 purports to categorize and/or summarize this action and, in so doing,  
9 make factual allegations or claim entitlement to certain forms of relief, which are all denied.

10 2. JPI lacks sufficient information to admit or deny the residence of plaintiff Gloria  
11 Roman (“Roman”) as alleged in Paragraph 2 of the Second Amended Complaint. The remainder  
12 of the allegations in Paragraph 2 are denied.

13 3. JPI lacks sufficient information to admit or deny the residence of plaintiff Gerardo  
14 Vasquez (“Vasquez”) alleged in Paragraph 3 of the Second Amended Complaint. The remainder  
15 of the allegations in Paragraph 3 are denied.

16 4. JPI lacks sufficient information to admit or deny the residence of plaintiff Juan  
17 Aguilar (“Aguilar”) alleged in Paragraph 4 of the Second Amended Complaint. The remainder  
18 of the allegations in Paragraph 4 are denied.

19 5. Paragraph 5 purports to categorize and/or summarize this action and, in so doing,  
20 make factual allegations or claim entitlement to certain forms of relief, which are all denied.

21 6. JPI admits the allegations in Paragraph 6.

22 7. Paragraph 7 calls for a legal conclusion, which JPI lacks sufficient information to  
23 admit or deny. JPI states that, although there is complete diversity between the parties which is  
24 admitted, there is no other basis for this Court’s jurisdiction and such jurisdiction is denied.

25 8. JPI denies the allegations in Paragraph 8, other than admitting that it is Master  
26 Franchisor, and that its Regional Master Franchisees (a/k/a “Master Owners”) sell unit  
27 franchises, or “subfranchises” as they are known under California franchise law.

28 9. JPI denies the allegations in Paragraph 9.

1           10.     JPI admits that subfranchisors, and Master Owners all have a “doing business as”  
2 name that includes the tradename, “Jan-Pro” but JPI denies the remaining allegations in  
3 Paragraph 10.

4           11.     JPI admits that its Master Owners are its franchisees, but JPI denies the remaining  
5 allegations in Paragraph 11.

6           12.     JPI denies the allegations in Paragraph 12.

7           13.     JPI denies the allegations in Paragraph 13, further stating that JPI does require use  
8 of the “Jan-Pro” name/logo pursuant to standards it has set regarding their use.

9           14.     JPI denies the allegations in Paragraph 14.

10          15.     JPI denies the allegations in Paragraph 15.

11          16.     JPI denies the allegations in Paragraph 16.

12          17.     JPI denies the allegations in Paragraph 17.

13          18.     JPI denies the allegations in Paragraph 18, further stating that JPI generally lacks  
14 sufficient information to admit or deny whether Master Owners negotiate franchise agreements  
15 with their subfranchisees but that, upon information and belief from discovery in this lawsuit,  
16 subfranchisees apparently do so.

17          19.     JPI denies the allegations in Paragraph 19.

18          20.     JPI states that Paragraph 20 is vague as to which franchise agreements it refers,  
19 further stating that JPI receives royalty revenue from Master Owners pursuant to JPI’s franchise  
20 agreement with Master Owners. The remaining allegations in Paragraph 20 are denied.

21          21.     JPI denies the allegations in Paragraph 21, further stating that there are provisions  
22 in JPI’s franchise agreements with Master Owners that do allow JPI to protect its brand and  
23 trademark if the Master Owner is harming such brand and trademark or not taking appropriate  
24 steps to protect them.

25          22.     JPI denies the allegations in Paragraph 22.

26          23.     JPI denies the allegations in Paragraph 23.

27          24.     JPI denies the allegations in Paragraph 24.

28          25.     JPI denies the allegations in Paragraph 25.

- 1 26. JPI denies the allegations in Paragraph 26.
- 2 27. JPI denies the allegations in Paragraph 27.
- 3 28. JPI denies the allegations in Paragraph 28.
- 4 29. JPI denies the allegations in Paragraph 29.
- 5 30. JPI denies the allegations in Paragraph 30.
- 6 31. JPI denies the allegations in Paragraph 31.
- 7 32. JPI denies the allegations in Paragraph 32.
- 8 33. JPI denies the allegations in Paragraph 33.
- 9 34. JPI denies the allegations in Paragraph 34.
- 10 35. JPI denies the allegations in Paragraph 35.
- 11 36. JPI denies the allegations in Paragraph 36.
- 12 37. JPI denies the allegations in Paragraph 37.
- 13 38. JPI denies the allegations in Paragraph 38.
- 14 39. JPI denies the allegations in Paragraph 39.
- 15 40. JPI denies the allegations in Paragraph 40.
- 16 41. JPI denies the allegations in Paragraph 41.
- 17 42. JPI denies the allegations in Paragraph 42.
- 18 43. JPI denies the allegations in Paragraph 43.
- 19 44. JPI admits that it receives royalty revenue from its Regional Master Franchisees  
20 that are calculated based on franchise sales and gross revenue from commercial cleaning services  
21 performed by unit franchisees, but JPI denies the remaining allegations in Paragraph 44.
- 22 45. JPI denies the allegations in Paragraph 45.
- 23 46. JPI denies the allegations in Paragraph 46.
- 24 47. JPI denies the allegations in Paragraph 47.
- 25 48. JPI denies the allegations in Paragraph 48.
- 26 49. JPI denies the allegations in Paragraph 49.
- 27 50. JPI denies the allegations in Paragraph 50.
- 28 51. JPI denies the allegations in Paragraph 51.

1 52. JPI denies the allegations in Paragraph 52.

2 53. JPI denies the allegations in Paragraph 53.

3 54. JPI denies the allegations in Paragraph 54.

4 55. JPI denies the allegations in Paragraph 55.

5 56. JPI denies the allegations in Paragraph 56.

6 57. JPI denies the allegations in Paragraph 57, further stating that the Employment  
7 Development Department (“EDD”) has, on multiple occasions, found that JPI’s Regional Master  
8 Franchisees in California have no obligations to EDD regarding unit franchisees/subfranchisees.

9 58. JPI denies the allegations in Paragraph 58, further stating that, upon information  
10 and belief, Plaintiffs do have such coverage.

11 **COUNT I**

12 **(Unfair and Deceptive Business Practices)**

13 JPI denies liability for Count I of the Second Amended Complaint, and any factual  
14 allegations set forth therein to support liability. JPI further denies any class or representative  
15 action liability alleged therein.

16 **COUNT II**

17 **(Misclassification as Independent Contractors)**

18 JPI denies liability for Count II of the Second Amended Complaint, and any factual  
19 allegations set forth therein to support liability. JPI further denies any class or representative  
20 action liability alleged therein.

21 **COUNT III**

22 **(Wage Law Violations)**

23 JPI denies liability for Count III of the Second Amended Complaint, and any factual  
24 allegations set forth therein to support liability. JPI further denies any class or representative  
25 action liability alleged therein.

26 **COUNT IV (Misnumbered Count VI)**

27 **(Quantum Meruit)**

28 JPI denies liability for Count IV of the Second Amended Complaint, and any factual

1 allegations set forth therein to support liability. JPI further denies any class or representative  
2 action liability alleged therein.

3 **COUNT V (Misnumbered Count VII)**

4 **(Unjust Enrichment)**

5 JPI denies liability for Count V of the Second Amended Complaint, and any factual  
6 allegations set forth therein to support liability. JPI further denies any class or representative  
7 action liability implied or alleged therein.

8 **REQUESTS FOR RELIEF**

9 Plaintiffs' requests for relief should be denied, class certification should be denied, and  
10 further, judgment should enter in favor of JPI on each claim in the Second Amended Complaint.

11 **AFFIRMATIVE DEFENSES**

12 Without assuming any burden of proof that it would not otherwise bear under applicable  
13 law, JPI asserts the following affirmative defenses:

14 **FIRST AFFIRMATIVE DEFENSE**

15 **(Failure to State a Claim)**

16 Some or all of Plaintiffs' claims fail to state a claim upon which relief can be granted.

17 **SECOND AFFIRMATIVE DEFENSE**

18 **(Statutes of Limitation)**

19 Some or all of Plaintiffs' claims or claims for damages are barred by the applicable  
20 statutes of limitations.

21 **THIRD AFFIRMATIVE DEFENSE**

22 **(Lack of Subject Matter Jurisdiction)**

23 This court lacks subject matter jurisdiction over some or all of Plaintiffs' claims.

24 **FOURTH AFFIRMATIVE DEFENSE**

25 **(Judicial and Equitable Estoppel)**

26 Some or all of Plaintiffs' claims are barred by judicial estoppel and/or equitable estoppel.

27 ///

28 ///

1 **FIFTH AFFIRMATIVE DEFENSE**

2 **(Failure to Name Indispensable Parties)**

3 Some or all of Plaintiffs' claims are barred by their failures to name necessary and  
4 indispensable parties.

5 **SIXTH AFFIRMATIVE DEFENSE**

6 **(Franchise Agreements)**

7 Some or all of Plaintiffs' claims are barred by the terms of their respective franchise  
8 agreements.

9 **SEVENTH AFFIRMATIVE DEFENSE**

10 **(Failure to Satisfy Statutory Prerequisites)**

11 Some or all of Plaintiffs' statutory claims for unfair business practices are barred by their  
12 claimed status as employees or failure to take statutory prerequisites to suit.

13 **EIGHTH AFFIRMATIVE DEFENSE**

14 **(Failure to Exhaust Administrative Remedies)**

15 Some or all of Plaintiffs' statutory claims for unfair business practices and/or damages  
16 thereby and some or all of Plaintiffs' wage claims are barred by their failure to take statutory  
17 prerequisites to suit and/or exhaust administrative procedures including, but not limited to, those  
18 required by the California Private Attorney General Act, California Labor Code Sections 2698,  
19 *et seq.*

20 **NINTH AFFIRMATIVE DEFENSE**

21 **(No Employment Relationship)**

22 Plaintiffs' claims are barred by the fact that they are independent contractors and did not  
23 have an employment relationship with JPI.

24 **TENTH AFFIRMATIVE DEFENSE**

25 **(Collateral Estoppel/Res Judicata)**

26 Some or all of Plaintiffs' claims are barred by collateral estoppel (issue preclusion) or *res*  
27 *judicata* (claim preclusion) based on identical "parties' in interest."

28 ///

1 **ELEVENTH AFFIRMATIVE DEFENSE**

2 **(No Basis for Class or Representative Action Claims)**

3 Plaintiffs cannot satisfy the criteria for class certification under Fed. R. Civ. P. 23, nor  
4 can Plaintiff satisfy the criteria for any other form of representative action.

5 **TWELFTH AFFIRMATIVE DEFENSE**

6 **(Inadequate Performance)**

7 Some or all of Plaintiffs' claims are barred by their inadequate performance.

8 **THIRTEENTH AFFIRMATIVE DEFENSE**

9 **(Waiver/Laches)**

10 Some or all of Plaintiffs' claims are barred by the doctrines of waiver and/or laches.

11 **FOURTEENTH AFFIRMATIVE DEFENSE**

12 **(Unclean Hands)**

13 Some or all of Plaintiffs' claims are barred by their unclean hands.

14 **FIFTEENTH AFFIRMATIVE DEFENSE**

15 **(Adequate Legal Remedy)**

16 Some or all of Plaintiffs' claims are barred by the availability of an adequate remedy at  
17 law.

18 **SIXTEENTH AFFIRMATIVE DEFENSE**

19 **(Ratification)**

20 Some or all of Plaintiffs' claims are barred by ratification.

21 **SEVENTEENTH AFFIRMATIVE DEFENSE**

22 **(No Injury)**

23 Plaintiffs have not suffered any injury from any allegedly noncompliant wage statement.

24 **EIGHTEENTH AFFIRMATIVE DEFENSE**

25 **(Plaintiffs Lack Standing)**

26 Plaintiffs' Second Amended Complaint, and each cause of action alleged therein, is  
27 barred because Plaintiffs lack standing to sue.

28 ///



1 **NINETEENTH AFFIRMATIVE DEFENSE**

2 **(No Willful Failure to Comply)**

3 At all times relevant and material herein, JPI did not willfully or intentionally fail to  
4 comply with the California Labor Code.

5 **TWENTIETH AFFIRMATIVE DEFENSE**

6 **(No Basis for UCL Claims)**

7 JPI cannot be liable for any alleged violation of California Business and Professions  
8 Code Section 17200 et seq., because its actions were not unlawful, unfair, fraudulent, deceptive,  
9 untrue nor likely to mislead, and its actions, conduct, and dealings were lawful, as authorized by  
10 applicable state and federal statutes, rules, and regulations, and such actions, conduct, and  
11 dealings were carried out in good faith and for legitimate business purposes.

12 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

13 **(New Right-Exclusive Remedy Doctrine)**

14 Plaintiffs' causes of action for quantum meruit and unjust enrichment are barred by  
15 California's doctrine of "new right-exclusive remedy."

16 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

17 **(Failure to Mitigate)**

18 If Plaintiffs have suffered any damages as a result of the facts alleged in their Second  
19 Amended Complaint, which JPI denies, Plaintiffs are not entitled to recover the amount of  
20 damages alleged or any damages due to their failure to make reasonable efforts to mitigate or  
21 minimize the damages incurred.

22 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

23 **(Other Causes)**

24 If Plaintiff sustained injuries or damages, which alleged injuries or damages are denied,  
25 the alleged injuries and damages, if any, were caused solely by the acts, wrongs, or omissions of  
26 third parties, entities, preexisting conditions, forces, and/or things over which JPI had no control  
27 and for which JPI is not responsible.

28 ///

1 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

2 **(Set Offs)**

3 To the extent that a court holds that Plaintiffs are entitled to damages or restitution, JPI is  
4 entitled as a matter of equity to all available set offs.

5 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

6 **(Consent)**

7 Plaintiffs approved, consented to, and/or authorized the conduct alleged in the Second  
8 Amended Complaint through their actions, omissions, and course of conduct; accordingly, the  
9 Second Amended Complaint and each purported case of action therein are barred.

10 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

11 **(Constitutionality)**

12 The penalties claimed by Plaintiffs in this case are excessive and, thus, violate the state  
13 and federal Constitutions.

14 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

15 **(No Attorneys' Fees)**

16 The Second Amended Complaint fails to allege facts sufficient to establish a claim for  
17 attorneys' fees.

18 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

19 **(Exempt Status)**

20 Plaintiffs' Second Amended Complaint, and each cause of action alleged therein, is  
21 barred because to the extent Plaintiffs can be classified as JPI's employees, which JPI denies,  
22 Plaintiff were exempt from the wage and hour laws on which their claims are based per the  
23 applicable provisions of the Industrial Wage Commission order(s).

24 **RESERVATION OF RIGHTS**

25 JPI hereby gives notice that it intends to rely upon such other and further affirmative  
26 defenses as may become available during any further discovery in this action and reserves the  
27 right to amend its Answer to assert any such defenses.

28 ///

1 WHEREFORE, JPI prays for judgment as follows:

- 2 1. That Plaintiffs take nothing by their Second Amended Complaint herein;
- 3 2. That the Second Amended Complaint be dismissed;
- 4 3. That judgment be entered in favor of JPI;
- 5 4. For attorneys' fees;
- 6 5. For costs of suit incurred herein; and
- 7 6. For such other and further relief as the Court may deem proper.

8

9 DATED: February 2, 2017

10

11 /s/Philip J. Smith

12 Philip J. Smith (SBN232462)

13 Jeffrey M. Rosin (admitted *pro hac vice*)

14 CONSTANGY, BROOKS, SMITH & PROPHETE, LLP

15 Attorneys for Defendant, Jan-Pro Franchising International, Inc.

16

17

18

19

20

21

22

23

24

25

26

27

28