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9 **UNITED STATES DISTRICT COURT**  
10 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
11

12 GLORIA ROMAN, GERARDO VAZQUEZ,  
JUAN AGUILAR, and all others similarly  
13 situated,

14 Plaintiffs,

15 v.

16 JAN-PRO FRANCHISING  
INTERNATIONAL, INC.

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

**SECOND AMENDED COMPLAINT**

1 **I. INTRODUCTION**

2 1. This is a class action brought on behalf of workers who have performed cleaning  
3 services for Defendant Jan-Pro Franchising International, Inc. (“Jan-Pro”) in California. The  
4 above-named plaintiffs and other similarly situated individuals have been subjected to systemic  
5 misrepresentations and breaches of contract in their relations with Jan-Pro as described below.  
6 Most notably, Jan-Pro purports to sell cleaning “franchises,” knowing it does not have sufficient  
7 business to satisfy its obligations under its franchise agreements. Individuals purchase these  
8 “franchises” for substantial sums of money, based on Jan-Pro’s misrepresentations about the  
9 guaranteed amount of monthly income the franchises will provide. In addition, Jan-Pro has also  
10 improperly misclassified these workers as independent contractors and thereby denied them  
11 benefits to which they are entitled as employees under the wage laws of California, including  
12 guaranteed minimum wage, overtime pay, other wage protections, and other benefits of  
13 employment. In this action, the above-named plaintiffs seek to recover, on their own behalves  
14 and on behalf of all similarly situated individuals, compensation for these violations, and  
15 attorneys’ fees and costs.

16 **II. PARTIES**

17 2. Plaintiff Gloria Roman is an adult resident of San Jose, California, who has  
18 performed cleaning services for Jan-Pro in California since approximately June 2004.

19 3. Plaintiff Gerardo Vazquez is an adult resident of Bloomington, California, who  
20 performed cleaning services for Jan-Pro in California from approximately July 2007 to October  
21 2008.

22 4. Plaintiff Juan Aguilar is an adult resident of Tracy, California, who performed  
23 cleaning services for Jan-Pro in California from approximately December 2003 to 2009.

24 5. This is a class action that the above-named plaintiffs bring on their own behalves  
25 and on behalf of all others similarly situated, namely all other individuals who have performed  
26 cleaning services for Jan-Pro within California and have been subjected to the legal violations  
27 described in this complaint. The class (and any subclasses that may be appropriate) meets all of  
28 the requirements of Rule 23 of the Federal Rule of Civil Procedure.

1           6. Defendant Jan-Pro Franchising International, Inc. is a domestic corporation with  
2 its principal place of business in Alpharetta, Georgia.

3 **III. JURISDICTION AND VENUE**

4           7. Jurisdiction is invoked in this Court pursuant to 28 U.S.C. § 1332(d)(2).

5 **IV. STATEMENT OF FACTS**

6 **A. Jan-Pro and Its Master franchisees/Agents**

7           8. Jan-Pro operates pursuant to a “Master franchisee” system, by which the Master  
8 franchisees sell and administer Jan-Pro cleaning “franchises” and direct the work of Jan-Pro’s  
9 cleaning workers/“franchisees.”

10           9. Jan-Pro maintains the right to control the conduct of its Master franchisees/agents  
11 and exerts such actual control over its Master franchisees that the Master franchisees act as  
12 agents of Jan-Pro.

13           10. Jan-Pro’s Master franchisees/agents do business under the name “Jan-Pro.”

14           11. Jan-Pro and its Master franchisees/agents are part of a franchise organization.

15           12. Jan-Pro has developed the methods, procedures, and products which it requires its  
16 Master franchisees/agents to use in selling cleaning franchises and directing the work of Jan-Pro  
17 cleaning workers/franchisees.

18           13. Jan-Pro requires its Master franchisees/agents to use Jan-Pro’s name and logo and  
19 to follow Jan-Pro standards, policies, practices, and procedures.

20           14. Jan-Pro requires that all advertising and promotional materials used by its Master  
21 franchisees/agents conform to Jan-Pro policies, and all advertising and promotional materials are  
22 subject to review and approval by Jan-Pro prior to use.

23           15. Individuals who purchase cleaning franchises from Jan-Pro Master  
24 franchisees/agents are Jan-Pro cleaning workers/franchisees. These cleaning  
25 workers/franchisees have included the above-named plaintiffs.

1           **B.     Jan-Pro’s Adhesion Cleaning Franchise Agreement**

2           16.     Jan-Pro has developed “franchise agreements” which it requires Jan-Pro cleaning  
3 workers/franchisees to sign (with Jan-Pro’s Master franchisees/agents) in order to receive  
4 cleaning work.

5           17.     Jan-Pro’s franchise agreement is a form contract of adhesion establishing the  
6 terms and conditions of employment of Jan-Pro cleaning workers.

7           18.     None of the Jan-Pro cleaning workers is able to negotiate for different terms and  
8 conditions from those appearing in the form franchise agreement.

9           19.     Jan-Pro’s franchise agreements require Jan-Pro cleaning workers to adhere to Jan-  
10 Pro standards and methods in providing cleaning services and to operate under the name “Jan-  
11 Pro.”

12          20.     Jan-Pro is a beneficiary of these franchise agreements.

13          21.     Jan-Pro retains the right to enforce provisions of its franchise agreements directly  
14 and may directly oversee the work of any Jan-Pro cleaning worker/franchisee.

15          22.     Jan-Pro’s form franchise agreement is written exclusively in English, in highly  
16 technical and confusing language, with misleading section headings and provisions regarding  
17 waivers of important rights buried within the agreement.

18          23.     The form franchise agreement is not available in other languages, although many  
19 of the workers who sign these form franchise agreements have little to no fluency in English.

20          24.     Consequently, as Jan-Pro knows, the workers do not understand the terms of the  
21 agreement, whether or not they speak English.

22          25.     On information and belief, Jan-Pro and its Master franchisees/agents target  
23 immigrants in particular because they are easily victimized by Jan-Pro’s misrepresentations and  
24 other systemic legal violations, as described herein.

25           **C.     Jan-Pro’s Misrepresentations and Breaches of Contract**

26          26.     In order to induce cleaning workers to sign its franchise agreement, Jan-Pro  
27 (through its Master franchisees/agents) negligently and/or intentionally misrepresents that it has  
28 sufficient business to provide the monthly income it promises the workers in their agreements.

1 In fact, Jan-Pro does not have enough accounts to offer to workers who have signed franchise  
2 agreements.

3 27. Thus, Jan-Pro knows it does not have sufficient business to satisfy the terms of  
4 the franchise agreements when it advertises franchises, solicits franchisees, and enters into  
5 franchise contracts. Jan-Pro (through its Master franchisees/agents) knowingly and willfully  
6 solicits and enters into agreements which it knows it cannot perform.

7 28. Jan-Pro (through its Master franchisees/agents) also misrepresents that workers  
8 will receive a higher hourly rate of pay for their work than Jan-Pro knows they will be able to  
9 earn.

10 29. Pursuant to Jan-Pro's form franchise agreement, individuals pay substantial sums  
11 of money as franchise fees in order to obtain cleaning accounts (in the tens of thousands of  
12 dollars).

13 30. In exchange for these large franchise fees, Jan-Pro (through its Master  
14 franchisees/agents) guarantees a certain level of monthly income beginning after the cleaning  
15 workers/franchisees have made down payments to purchase their franchise and completed their  
16 training period.

17 31. However, Jan-Pro (through its Master franchisees/agents) systemically breaches  
18 its written agreements by not providing or offering sufficient or adequate work as promised to  
19 produce the guaranteed level of income.

20 32. Through a variety of means involving misrepresentation, Jan-Pro (through its  
21 Master franchisees/agents) purports to satisfy its obligations under Jan-Pro's form franchise  
22 agreements when it has come nowhere near satisfying those obligations. Through these means,  
23 Jan-Pro attempts to make it appear that it is the workers' fault, rather than Jan-Pro's, that they do  
24 not have sufficient accounts to satisfy their monthly income guarantee.

25 33. For example, Jan-Pro (through its Master franchisees/agents) negligently and/or  
26 intentionally misrepresents the number of hours per week that will be required to service the  
27 accounts offered. These misrepresentations are used to induce workers to accept the accounts  
28

1 toward their guaranteed level of income. The accounts typically require substantially more hours  
2 of work than Jan-Pro represents.

3 34. In addition, Jan-Pro (through its Master franchisees/agents) promises cleaning  
4 accounts that are geographically convenient to one another and convenient to the workers'  
5 homes. However, the accounts are typically spread very far apart, making it very inconvenient,  
6 if not impossible, to accept or perform the work for these accounts.

7 35. Jan-Pro (through its Master franchisees/agents) typically contends that it has  
8 fulfilled its obligations under the franchise contract by offering accounts, knowing that accounts  
9 offered could not be accepted due to geographic inconvenience, sheer impossibility of  
10 performing the number of hours of work required to service the accounts, or rates of pay well  
11 below what was promised.

12 36. Jan-Pro (through its Master franchisees/agents) also frequently violates the form  
13 franchise agreement by taking accounts away without warning and for no justifiable reason.  
14 Also in violation of the agreement, Jan-Pro gives no opportunity to correct or challenge alleged  
15 deficiencies in workers' performance.

16 37. When doing so, Jan-Pro (through its Master franchisees/agents) frequently tells  
17 the workers performing the cleaning services that the customers were dissatisfied with their  
18 work, when in fact the customers were satisfied with their work.

19 38. After taking an account away from a worker, Jan-Pro (through its Master  
20 franchisees/agents) then can offer the account to another worker who has signed a franchise  
21 agreement to count toward that person's monthly guarantee. In this way, Jan-Pro churns the  
22 accounts it has, in order to make it appear that it has satisfied its franchise agreements.

23 39. When Jan-Pro (through its Master franchisees/agents) does not satisfy the terms  
24 of the workers' franchise agreements by not offering sufficient accounts (that are free from  
25 misrepresentations) or by taking away accounts without justification or warning, it does not  
26 refund the franchise fees that the workers have already paid.

1           40.     Indeed, Jan-Pro (through its Master franchisees/agents) requires workers to  
2 continue making payments on their franchise fees, billing them for these payments, even when  
3 they have no further work from Jan-Pro.

4           41.     In addition, Jan-Pro (through its Master franchisees/agents) deducts excessive fees  
5 from the payments it makes to the workers under the franchise agreements.

6           42.     Jan-Pro (through its Master franchisees/agents) significantly underbids cleaning  
7 contracts with its clients. As a result of this underbidding and the deduction of excessive fees  
8 from their pay, the workers who have contracted with Jan-Pro receive far less pay for their work  
9 than the fair value of their services and far less pay than they were promised on an hourly and  
10 monthly basis.

11           43.     In addition to Jan-Pro's involvement in the practices described above through its  
12 Master franchisees/agents, Jan-Pro is directly involved in these practices to the extent that it has  
13 taken over direct oversight of certain cleaning franchises.

14           44.     Moreover, Jan-Pro receives revenue on the sales of all cleaning franchises by its  
15 Master franchisees/agents, as well as a monthly percentage of all revenue generated through the  
16 work of the cleaning workers/franchisees. In this way, Jan-Pro benefits from the deduction of  
17 excessive fees from the pay of Jan-Pro cleaning workers/franchisees.

18           45.     Jan-Pro requires that its Master franchisees/agents sell a minimum number of  
19 cleaning franchises each year. Master franchisees/agents that do not satisfy these quotas may be  
20 terminated by Jan-Pro.

21           46.     On information and belief, Jan-Pro's strict quotas for its Master  
22 franchisees/agents encourages and/or results in Master franchisees/agents churning cleaning  
23 accounts and selling cleaning franchises regardless of whether Jan-Pro can satisfy the amount of  
24 promised business.

25           47.     Jan-Pro has final approval of all terminations of franchises.  
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**D. Jan-Pro's Misclassification of Its Cleaning Workers as Independent Contractors**

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2 48. Jan-Pro (through its Master franchisees/agents) purports to classify its cleaning  
3 workers as independent contractors. However, these workers are in fact employees under the  
4 statutes and common law of California.

5 49. The behavioral and financial control manifested over these workers by Jan-Pro  
6 and its Master franchisees/agents demonstrates that the workers are employees rather than  
7 independent contractors.

8 50. The cleaning workers perform services within Jan-Pro's usual course of business,  
9 which is to provide cleaning services to customers.

10 51. Also, Jan-Pro (through its Master franchisees/agents) instructs the cleaning  
11 workers in how to do their work and dictates their performance of the details of their jobs.

12 52. The cleaning workers generally do not work in an independently established trade,  
13 occupation, profession, or business. Instead, as required by their contracts, the cleaning workers  
14 perform cleaning services exclusively for Jan-Pro's clients.

15 53. Also, the cleaning workers do not represent themselves to the public as being in an  
16 independent business to provide cleaning services, and they typically have not invested in an  
17 independent business apart from their payment of "franchise" fees to Jan-Pro.

18 54. Because of their misclassification by Jan-Pro as independent contractors, these  
19 cleaning workers have not received the benefits that inure from the employment relationship  
20 under law, for example, minimum wage, time and a half for overtime hours, etc.

21 55. Numerous deductions are made from the cleaning workers' pay, which constitute  
22 improper deductions from wages. For example, Jan-Pro and its Master franchisees/agents deduct  
23 payments towards "franchise" fees, interest payments, payments for Jan-Pro to manage the  
24 workers' cleaning accounts, and other payments. It also withholds workers' pay when it  
25 contends that Jan-Pro clients have not paid their bills.

26 56. Jan-Pro's cleaning workers do not receive pay for their time spent traveling  
27 between different accounts during the work day.  
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1 2802), in violation of these and other California wage laws (Cal. Labor Code § 200, *et seq.*; Cal.  
2 Labor Code § 500, *et seq.*).

3 **COUNT VI**

4 **(Quantum Meruit)**

5 The plaintiffs and class members have been deprived by Defendant of the fair value of  
6 their services and are thus entitled to recovery in quantum meruit.

7 **COUNT VII**

8 **(Unjust Enrichment)**

9 Through the conduct described above, Defendant has been unjustly enriched under the  
10 common law of California.

11 **JURY DEMAND**

12 Plaintiffs request a trial by jury on all their claims.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiffs request that this Court enter the following relief:

- 15
- 16 1. Certification of this case class action on behalf of workers who have performed
  - 17 cleaning services for Defendant in California;
  - 18 2. Damages attributable to Jan-Pro's statutory and common law violations;
  - 19 3. Statutory enhancement of damages as allowed by law;
  - 20 4. Declaratory and injunctive relief, requiring Jan-Pro to cease its illegal practices;
  - 21 5. Any other relief to which the plaintiffs and class members may be entitled.
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1 Dated: January 26, 2017

Respectfully submitted,

2 GLORIA ROMAN, GERARDO VAZQUEZ, JUAN  
3 AGUILAR, and all others similarly situated,

4 By their attorneys,

5 /s/ Shannon Liss-Riordan

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18 **CERTIFICATE OF SERVICE**

19 I hereby certify that a copy of the foregoing document was served by electronic filing on  
20 January 26, 2017, on all counsel of record.

21 /s/ Shannon Liss-Riordan

22 Shannon Liss-Riordan