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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ALEJANDRO JUAREZ, MARIA JUAREZ,	)	Case No. 09-3495 SC
LUIS A. ROMERO and MARIA PORTILLO,	)	
individually and on behalf of all	)	ORDER DENYING PLAINTIFFS'
others similarly situated,	)	<u>MOTION TO CERTIFY THE CLASS</u>
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
JANI-KING OF CALIFORNIA, INC., a	)	
Texas corporation, JANI-KING,	)	
INC., a Texas corporation, JANI-	)	
KING INTERNATIONAL, INC., a Texas	)	
corporation, and DOES 1 through	)	
20, inclusive,	)	
	)	
Defendants.	)	

This is a putative class action arising out of the sale of franchises by Defendants Jani-King of California, Inc., Jani-King, Inc., and Jani-King International, Inc. ("Defendants") to Plaintiffs Alejandro Juarez, Maria Juarez, Luis A. Romero, Maria Portillo ("Plaintiffs"), and others similarly situated. First Amended Complaint, ECF No. 32 ("FAC"). On July 9, 2010, Plaintiffs petitioned the Court for leave to file a brief exceeding Civil Local Rule 7-4(b)'s twenty-five-page limit. ECF No. 48. Plaintiffs claimed they needed additional space "given that there are fourteen causes of action at issue in this case, which include both consumer and employment claims, and Plaintiffs must adequately

1 address all of the requirements of Federal Rules of Civil  
2 Procedure." Id. The Court denied this request. ECF No. 50.

3 On July 16, 2010, Plaintiffs filed their Motion to Certify, as  
4 well as sixty exhibits totaling more than four thousand pages in  
5 support of the Motion. ECF Nos. 52 ("Mot."), 53-63. Defendants  
6 filed an Opposition, as well as a separate memorandum of objections  
7 to the evidence submitted in support of Plaintiffs' Motion. ECF  
8 Nos. 78 ("Opp'n"), 75 ("Defs.' Objs.").<sup>1</sup> Plaintiffs filed a Reply  
9 and a response to Defendants' objections. ECF Nos. 87 ("Reply"),  
10 91 ("Resp. to Defs.' Objs.").

11 Defendants object to an eleven-page section of the September  
12 17, 2010 Declaration of Whitney Huston, ECF No. 55-1 ("Huston  
13 Decl."), which Plaintiffs filed in support of their Motion. The  
14 Statement of Facts in Plaintiffs' Motion cites almost exclusively  
15 to seventy-six paragraphs in this declaration. See Mot. at 2-7.  
16 These paragraphs in turn cite to the evidence supporting the  
17 Motion. For example, a sentence in Plaintiffs' Motion reads:

18 JK conceals the fact that the price it  
19 negotiates for cleaning accounts, after all  
20 fees are deducted, leaves franchisees without a  
profit and with little to no return on their  
investment. (S ¶ 37.)

21 Mot. at 4. Paragraph 37 of the Huston Declaration provides:

22 JK conceals the fact that the price it  
23 negotiates for cleaning accounts, after all  
24 fees are deducted, leaves franchisees without a  
25 profit and with little to no return on their  
26 investment. (Evid. Tab E ¶¶ 8-11; Evid. Tab F ¶  
4; Evid. Tab G ¶ 5; Evid. Tab H ¶ 5; Evid. Tab  
I ¶ 6; Evid. Tab J ¶ 5; Evid. Tab K ¶ 5; Evid.

27 <sup>1</sup> Defendants filed their Objections before this District's  
28 September 20, 2010 revision of Civil Local Rule 7-3, which now  
requires evidentiary and procedural objections to a motion to be  
contained within the opposition brief. See Civ. L. R. 7-3(a).

1 Tab L ¶ 6; Evid. Tab N ¶ 11; Evid. Tab O ¶¶ 29-  
2 34, 45-50, 54-58; Ex. 38; Ex. 56, 120:23-  
3 121:15; Ex. 57, 45:21-47:9; Ex. 58, 121:3-16;  
4 Ex. 60, 94:21-95:5; Ex. 61, 139:3-12, 139:17-  
5 140:1.)

6 Huston Decl. ¶ 37.

7 Defendants argue that through this practice, Plaintiffs evade  
8 Civil Local Rule 7-4(b)'s page limits on briefs. Defs.' Objs. at  
9 1. Defendants argue that this practice violates Civil Local Rule  
10 7-5(b), because Huston's declaration is argumentative and  
11 conclusory. Id. Defendants also argue that the practice violates  
12 Federal Rule of Civil Procedure 56(e), because Huston lacks  
13 personal knowledge of these statements. Id. Defendants write:

14 Plaintiffs seek to have the Court consider not  
15 only its Statement of Facts, but also the 11-  
16 page factual recitation in paragraphs 3 through  
17 78 of Ms. Huston's Declaration. This device  
enabled Plaintiffs to save space in their  
memorandum by foregoing a detailed discussion  
of the evidence and omitting actual citations  
to the record, thereby forcing the Court to go  
through the unnecessary step of reviewing the  
Huston Declaration to find the actual documents  
and testimony on which Plaintiffs rely.

18 Id. at 2.

19 Plaintiffs dismiss Defendants' Objections as a "hyper-  
20 technical attack on the format of Plaintiffs' presentation of the  
21 evidence used to support their Motion." Response to Defs.' Objs.  
22 at 1. Plaintiffs defend this practice, writing, "Plaintiffs  
23 presented the evidence this way in order to enable the Court to  
24 easily and efficiently identify which documents support each of  
25 Plaintiffs' factual contentions, not to demonstrate Ms. Huston's  
26 'personal knowledge' of the facts themselves, or to 'evade' the  
27 Court's page limits." Id. at 2.

28 The Court agrees with Defendants, and finds that the Huston

1 Declaration violates this District's local rules. Civil Local Rule  
2 7-5(b) provides:

3 An affidavit or declarations may contain only  
4 facts, must conform as much as possible to the  
5 requirements of FR CivP 56(e), and must avoid  
6 conclusions and argument. Any statement made  
7 upon information or belief must specify the  
8 basis therefor. An affidavit or declaration not  
9 in compliance with this rule may be stricken in  
10 whole or in part.

11 Paragraph 37, like paragraphs 3 through 78, is both  
12 argumentative and conclusory. Federal Rule of Civil Procedure  
13 56(e) states: "A supporting or opposing affidavit must be made on  
14 personal knowledge, set out facts that would be admissible in  
15 evidence, and show that the affiant is competent to testify on the  
16 matters stated." Fed. R. Civ. P. 56(e). Huston lacks personal  
17 knowledge of the statements in Paragraphs 3 to 78 of her  
18 Declaration, which are nothing more than endnotes to Plaintiffs'  
19 Motion. Plaintiffs' practice is an impermissible end-run around  
20 the page limits on briefs, and directly in opposition to this  
21 Court's July 12, 2010 order denying Plaintiffs' motion for leave to  
22 file an extended brief.

23 For these reasons, the Court SUSTAINS Defendants' objections  
24 to Paragraphs 3 to 78 of the Huston Declaration. With these  
25 paragraphs stricken, Plaintiffs' Complaint is left without factual  
26 support, and thus the Court DENIES Plaintiffs' Motion to Certify.

27 Accordingly, Plaintiffs' Motion to Certify the Class is  
28 DENIED. Plaintiffs shall have fourteen (14) days from the date of  
this Order to file an Amended Motion to Certify the Class that  
conforms with the Federal Rules of Civil Procedure and this  
District's Civil Local Rules. The hearing on this motion is set

1 for 10:00 A.M., December 3, 2010, with the opposition and reply due  
2 per Civil Local Rule 7-3. If Plaintiffs fail to file this motion  
3 within fourteen days of this Order, the Court's denial of this  
4 Motion to Certify the Class shall be WITH PREJUDICE.

5 The Court reminds Plaintiffs that one of the factors the Court  
6 will consider in evaluating a motion to certify the class under  
7 Rule 23(b)(3) is "the likely difficulties in managing a class  
8 action." Fed. R. Civ. P. 23(b)(3)(D). In Plaintiffs' Motion,  
9 Plaintiffs present multiple, disparate theories of predominance.  
10 They seek class certification for fourteen different causes of  
11 action. They seek certification under both Rule 23(b)(2) and  
12 (b)(3). They attach sixty exhibits, totaling more than four  
13 thousand pages of documents. Class action is superior to  
14 individual actions, and thus permissible under Rule 23(b)(3),  
15 "[w]hen common questions present a significant aspect of the case  
16 and they can be resolved for all members of the class in a single  
17 adjudication." Hanlon v. Chrysler Corp., 150 F.3d 1011, 1022 (9th  
18 Cir. 1998). This is the case that Plaintiffs must make for the  
19 class to be certified under Rule 23(b)(3).

20  
21 IT IS SO ORDERED.

22  
23 Dated: September 24, 2010

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26 UNITED STATES DISTRICT JUDGE  
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