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Superior Court of California,
County of Orange

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Clerk of the Superior Court
By Sonya Wilson, Deputy Clerk

7 Attorneys for Plaintiff GOLDENEYE HOLDINGS,
8 INC. d/b/a STRATUS BUILDING SOLUTIONS OF
9 ORANGE COUNTY

10 SUPERIOR COURT OF CALIFORNIA
11 COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

12 GOLDENEYE HOLDINGS, INC. d/b/a
13 STRATUS BUILDING SOLUTIONS OF
14 ORANGE COUNTY, a California
15 corporation,

16 Plaintiff,

17 v.

18 STRATUS FRANCHISING, LLC a/k/a
19 STRATUS BUILDING
20 SOLUTIONS, a Missouri limited liability
21 company; DENNIS JARRETT, an individual;
22 PETE FRESE, an individual; DAVID
23 FARRELL, an individual; BILL BLAIR, an
24 individual; MARVIN ASHTON, an
25 individual; CARMEN GARCIA, an
26 individual; and DOES 1-20, inclusive,

27 Defendants.

Case No. 30-2011-00531707-CU-FR-CJC

Assigned for all purposes to the Honorable
Robert J. Moss

FIRST AMENDED COMPLAINT FOR:

- (1) FRAUD;
- (2) NEGLIGENT MISREPRESENTATION AND OMISSION;
- (3) VIOLATION OF CALIFORNIA FRANCHISE INVESTMENT LAW;
- (4) SPECIFIC PERFORMANCE;
- (5) DECLARATORY RELIEF;
- (6) INJUNCTIVE RELIEF;
- (7) BREACH OF CONTRACT AND BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING;
- (8) INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS (EMPLOYMENT RELATIONSHIP);
- (9) INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS (CLIENT RELATIONSHIPS);

1 (10) INTERFERENCE WITH
2 PROSPECTIVE ECONOMIC
3 ADVANTAGE (EMPLOYMENT
4 RELATIONSHIP);

5 (11) INTERFERENCE WITH
6 PROSPECTIVE ECONOMIC
7 ADVANTAGE (CLIENT
8 RELATIONSHIPS);

9 (12) UNFAIR BUSINESS PRACTICES
10 (BUS. & PROF. CODE SECTION
11 17200); and

12 (13) RESCISSION

13 Complaint Filed: December 21, 2011

14 Plaintiff Goldeneye Holdings, Inc. d/b/a Stratus Building Solutions of Orange County, for
15 causes of action against Defendants Stratus Franchising, LLC a/k/a Stratus Building Solutions,
16 Dennis Jarrett, Pete Frese, David Farrell, Bill Blair, Marvin Ashton, Carmen Garcia, and DOES 1-
17 20 (all collectively "Defendants"), alleges as follows:

18 **PARTIES**

19 1. Plaintiff Goldeneye Holdings, Inc. d/b/a Stratus Building Solutions of Orange
20 County ("Plaintiff" or "Stratus-OC") is a California corporation with a principal place of business
21 in Orange County.

22 2. Defendant Stratus Franchising, LLC a/k/a Stratus Building Solutions ("Stratus
23 Franchising") is, and at all times mentioned was, a limited liability company organized under the
24 laws of the State of Missouri. Stratus Franchising, through its employees such as the individual
25 defendants named herein, certain of which are California employees, operates as a franchisor of
26 retail-commercial-industrial building cleaning service franchises under the name of Stratus
27 Building Solutions. Stratus Franchising's business is nationwide in scope, and includes the sale of
28 California territories and the collection of royalties from California territories. Stratus Franchising
has engaged in purposeful activities in the State of California (e.g., selling Stratus Building
Solutions franchises) with the knowledge and control of its Chief Executive Officer, President,

1 Vice Presidents, and Directors, who directly benefited from Stratus Franchising's activities in
2 California through their control and participation in such California activities.

3 3. Defendant Dennis Jarrett ("Jarrett") is the Chief Executive Officer of Stratus
4 Franchising. Upon information and belief, defendant Dennis Jarrett resides in the State of Illinois.

5 4. Defendant Pete Frese ("Frese") is the President of Stratus Franchising. Upon
6 information and belief, defendant Pete Frese resides in the State of Illinois.

7 5. Defendant David Farrell ("Farrell") is an Executive Vice President of Stratus
8 Franchising. Upon information and belief, defendant David Farrell resides in the State of
9 Massachusetts.

10 6. Defendant Bill Blair ("Blair") was at all relevant times a Vice President of Stratus
11 Franchising. Upon information and belief, defendant Bill Blair resides in the State of Illinois.

12 7. Defendant Marvin Ashton ("Ashton") is a Director of Master Development for
13 Stratus Franchising. Upon information and belief, defendant Marvin Ashton resides in Rancho
14 Santa Margarita, California.

15 8. Defendant Carmen Garcia ("Garcia") is a Director of Master Development for
16 Stratus Franchising. Upon information and belief, defendant Carmen Garcia resides in Riverside,
17 California.

18 9. At all times relevant herein, Defendants Jarrett, Frese, Farrell, Blair, Ashton, and
19 Garcia (collectively, the "Individual Defendants") acted as Stratus Franchising's principal officers
20 and directors concerning the activities attributed to them herein, exercising management
21 responsibility, authority and/or control with regard to such Stratus Franchising actions. The
22 Individual Defendants further, directly and indirectly, controlled Stratus Franchising's wrongful,
23 unlawful, and fraudulent conduct, as set forth herein, and materially aided and/or actively
24 participated with Stratus Franchising in the commission of such wrongful conduct as attributed to
25 each of them herein, including the deceptive and fraudulent manner of sale, breaches of
26 contractual obligations, interference with Plaintiff's employee and client business relationships,
27 and unlawful and unfair business practices.

28

10. Plaintiff is ignorant of the true names and capacities of Defendants sued herein as DOES 1 through 20, inclusive, and therefore sues these defendants by fictitious names. Plaintiff will amend this Complaint and include these Doe Defendants' true names and capacities when they are ascertained. Plaintiff is informed and believes, and upon that basis alleges, that each fictitious defendant was in some way responsible for, participated in, or contributed to the matters and things for which Plaintiff complains herein, and in some fashion has legal responsibility therefore. Any reference to "Defendants" shall include the fictitious defendants, both jointly and severally.

11. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant to this action, each Defendant, including those fictitiously named, was the agent, servant, employee, partner, joint venturer, alter ego, or surety of one or more of the other Defendants and was acting within the scope, time, place, and purpose of said agency, employment, partnership, venture, or suretyship, with the knowledge and consent or ratification of each of the other Defendants in doing things alleged herein.

JURISDICTION

12. Jurisdiction in the Orange County Superior Court is proper because the amount in controversy exceeds \$25,000, significant actions upon which this complaint is based occurred in the State of California, and all parties have sufficient relationships and contacts with the State of California to establish jurisdiction.

13. Venue in the Orange County Superior Court is proper because significant actions upon which this complaint is based occurred in Orange County, Defendants participated in a scheme that they knew would cause damage in this judicial district and which did cause damage in this judicial district, the principal place of business for Plaintiff is in Orange County, the residence of Defendant Ashton is in Orange County, and all parties have sufficient relationships and contacts with Orange County to authorize this venue.

1 **FACTUAL BACKGROUND**

2 **False Representations and Omissions**

3 14. On or around October 21, 2008, Plaintiff signed a Master Franchise Agreement
4 with Stratus Franchising for the exclusive right as master franchisee to sell and service
5 commercial-cleaning and maintenance-service franchises for the territory of Orange County,
6 California. Attached hereto as Exhibit A is a true and correct copy of the Master Franchise
7 Agreement between Plaintiff and Stratus Franchising ("Master Franchise Agreement"). By its
8 terms, the Master Franchise Agreement dictated that Plaintiff could not and was not qualified to
9 open its Stratus Building Solutions business until Plaintiff paid its entire pre-opening fee balance,
10 Plaintiff received further business-operating information, training manuals, and personal training
11 from Defendants, and until Plaintiff's business was approved by its insurance company and the
12 State of California. Plaintiff paid approximately 21% of its initial franchise fee to Stratus
13 Franchising on or around October 21, 2008, then its representative attended training with Stratus
14 Franchising in early January 2009, and then Plaintiff paid to Stratus Franchising the remaining
15 approximate 79% of its initial franchise fee on or around January 27, 2009. Plaintiff's Stratus
16 Building Solutions business then opened in April 2009.

17 15. Prior to and immediately after Plaintiff's signing of its Master Franchise
18 Agreement, including in connection with Plaintiff's mandatory training required by Stratus
19 Franchising in order to open a Stratus Building Solutions business and before Plaintiff remitted the
20 majority of its initial franchise fee to Stratus Franchising, Defendants Stratus Franchising, Jarrett,
21 Frese, and Blair (the "Fraud Defendants") made numerous fraudulent misrepresentations and
22 omissions of material fact regarding the Stratus Building Solutions franchise system, its financial
23 performance, its financial history, and its financial projections and metrics. The Fraud Defendants
24 provided untrue and misleading information and made material, knowing omissions of material
25 facts in order to induce individuals and entities, like Plaintiff, to purchase master franchisee
26 territories from Stratus Franchising.

27 16. Prior to and immediately after Plaintiff's signing of its Master Franchise
28 Agreement, including in connection with Plaintiff's mandatory training required by Stratus

1 Franchising in order to open a Stratus Building Solutions business and before Plaintiff remitted the
2 majority of its initial franchise fee to Stratus Franchising, Plaintiff attempted to complete a
3 thorough and open due diligence period with Stratus Franchising by asking numerous questions
4 and engaging in numerous discussions with the Fraud Defendants concerning the business of
5 Stratus Building Solutions and its financial metrics.

6 17. In such conversations, the Fraud Defendants consistently stated metrics, based on
7 represented actual past financial history of Stratus Building Solutions franchises, that projected
8 new business generation of up to \$15,588 a month by each salesperson Plaintiff would train and
9 employ (and Stratus Franchising recommends that more than one salesperson be employed in a
10 new master franchise territory). The Fraud Defendants explained that such new business would
11 then become monthly recurring billings that would aggregate into higher and higher amounts of
12 such monthly recurring billings for Plaintiff's business.

13 18. Specifically, on Monday, January 5, 2009, at approximately 9:15 a.m. in the
14 training conference room of Stratus Building Solutions in St. Louis, Missouri, a representative of
15 Plaintiff was presented with a sales manual that showed detailed financial calculations represented
16 to be based on past Stratus Building Solutions master franchisor performance that showed
17 anticipated new monthly billings of \$9,100. Also, Defendant Frese informed a representative of
18 Plaintiff that Plaintiff's Orange County territory was a \$30 million territory on two occasions prior
19 to Plaintiff paying its initial franchise fee and opening its Stratus Building Solutions business: (a)
20 on Wednesday, January 7, 2009 at approximately 3:00 p.m. in the training conference room of
21 Stratus Building Solutions in St. Louis, Missouri; and (b) on Wednesday, January 14, 2009 at
22 approximately 7:00 p.m. in a restaurant in St. Louis, Missouri. Additionally, on Monday, January
23 26, 2009 at 12:18 p.m., Plaintiff received an e-mail from Defendant Frese discussing
24 compensation plans for Regional Directors, and the compensation plan, as shown in the e-mail's
25 attachment, used the probable amount for new monthly billings that would be generated by each of
26 these employees in Orange County as \$10,000.

27 19. The Fraud Defendants offered and sold to Plaintiff its Stratus Building Solutions
28 franchise through the provision of written materials filed with the State of California, *e.g.*, a

1 Franchise Disclosure Document and its related documents that willfully contained untrue
2 statements of material fact and omissions of material fact. These representations and omissions
3 include, *inter alia*: (a) an inaccurate statement of current franchisees as the list included closed,
4 failed, and non-operating businesses; (b) misrepresentations or inaccurate statements concerning
5 the operation of a St. Louis, Missouri Master Franchise Business by Stratus Franchising; (c)
6 inaccurate and exaggerated information concerning the career history of a principal of Stratus
7 Franchising; and (d) financial information that was accounted for under both the accrual basis and
8 cash basis of accounting.

9 20. During its careful due diligence of the Stratus Building Solutions business, Plaintiff
10 requested contact information of current master franchisees who could validate the business
11 model. Although two master franchisees were provided to Plaintiff to validate the business model,
12 Plaintiff later learned that each of these master franchisees were not objective because they had
13 special arrangements with Stratus Franchising regarding future business investments and/or
14 financing.

15 21. During its careful due diligence of the Stratus Building Solutions business, Plaintiff
16 repeatedly requested information of the actual financial performance of the best performing master
17 franchisee and the worst performing master franchisee (with personal contact information omitted
18 so that the information would remain confidential). After repeated requests, and after Plaintiff
19 signed its Master Franchise Agreement and began the opening of its Stratus Building Solutions
20 business, Defendant Stratus Franchising and Defendant Blair provided the requested information.
21 This information showed that the best-performing master franchisee was performing at a financial
22 level well below the projected financial metrics the Defendant Stratus Franchising, Defendant
23 Jarrett, and Defendant Blair had provided to Plaintiff concerning its Stratus Building Solutions
24 business. Upon information and belief, the information showed the best-performing master
25 franchisee was performing at less than half of the projected financial metrics the Fraud Defendants
26 had provided to Plaintiff. These actual financial returns were known to Defendant Stratus
27 Franchising, Defendant Jarrett, and Defendant Blair when they repeatedly stated the higher,
28 misleading projections to Plaintiff meant to induce Plaintiff to accept the Master Franchise

1 Agreement and then make a substantial investment of time and money to open a Stratus Building
2 Solutions business in April 2009.

3 22. In actuality, despite Plaintiff's complete dedication to the implementation and
4 operation of its business in the Stratus Building Solutions franchise system, including through the
5 hiring and training of multiple salespersons, Plaintiff had amassed only \$47,827 of monthly
6 recurring billings at the end of its first year of existence. On information and belief, that result
7 was still a well-above-average actual result for a new master franchisee in the Stratus Building
8 Solutions franchise network. Indeed, Plaintiff received two Stratus Building Solutions
9 Outstanding Achievement Awards in 2009, as represented by plaques presented to it by
10 Defendants, for "exceptional record setting accomplishment," "significant contribution," and
11 "unparalleled initiative, commitment and persistence" that distinguished Plaintiff as "the best of
12 the best."

13 23. The Fraud Defendants further caused to be publicly disseminated, including
14 through the press release section of the Stratus Franchising website, press releases and other media
15 communications, information that intentionally misstated the financial performance of the Stratus
16 Building Solutions franchise network. For example, on or about the time that Plaintiff signed its
17 Master Franchise Agreement with Stratus Franchising, Defendant Jarrett and Defendant Frese
18 stated in a press release interview posted on Defendant Stratus Franchising's website that Stratus
19 Building Solutions garnered \$16 million in sales for the first five months of 2008 while it had no
20 more than 25 master-franchisee areas. This would equate to \$128,000 a month of sales for each of
21 the 25 master franchisee areas, on average. On information and belief, such sales figures had no
22 basis in reality for the early 2008 time period.

23 24. In any event, on information and belief, early sales figures publicly disseminated
24 by the Fraud Defendants were intentionally misleading because such early sales figures were not
25 exclusively based upon new, entrepreneurial businesses started in the Stratus Building Solutions
26 franchise network. Indeed, the founding Stratus Building Solutions master franchise territory
27 operated by Defendant Jarrett and Defendant Frese was in actuality a business previously
28 established in another company's franchise network that was transferred to the Stratus Building

1 Solutions network upon its founding. This fact was not disclosed to Plaintiff at any time. Indeed,
2 upon information and belief, said business operated by Defendant Jarrett and Defendant Frese
3 (upon which Stratus Building Solutions was founded) was disenfranchised out of the other
4 franchise network by the owner of that network. Such prior disenfranchisement of the owners of
5 Stratus Franchising was not disclosed to Plaintiff and the other master franchisees when they
6 bought into the Stratus Building Solutions franchise network.

7 25. Additionally, Defendant Stratus Franchising made numerous other
8 misrepresentations and material omissions relevant hereto, including the facts: (a) another Stratus
9 Building Solutions master franchisee had been already selling franchises in the Orange County
10 territory prior to Plaintiff's purchase of the rights to it; (b) Stratus Franchising does not act upon its
11 third-party-beneficiary rights to enforce its written anti-employee-recruitment policy governing its
12 master franchisees (indeed, Stratus Franchising will instead wrongfully interfere with a master
13 franchisor's relationships with its employees as explained below); and (c) Stratus Franchising fails
14 to provide support and resources as promised in the Master Franchise Agreement (indeed, for
15 example, Stratus Franchising will do quite the opposite and interfere with a master franchisor's
16 relationships with its customers as explained below).

17 26. In direct reliance on the representations (misrepresentations) explained above and
18 without knowing of the material nondisclosures explained above, Plaintiff became a master
19 franchisee in the Stratus Franchising franchise system with an opened, operating business in April
20 2009, paying the amounts outlined in the Master Franchise Agreement attached hereto as Exhibit
21 A. Prior to the execution of the Master Franchise Agreement and the opening of its Stratus
22 Building Solutions business, Plaintiff did not have any reason to know that the Fraud Defendants
23 had provided deceptive, fraudulent, false, and/or misleading information, or had engaged in illegal
24 conduct. Plaintiff discovered the misrepresentations and omissions explained above no earlier
25 than the first anniversary of operating its Stratus Building Solutions business, *i.e.*, April 2010.

26 27. Had it not been for the material misrepresentations and purposeful concealment of
27 material facts by the Fraud Defendants, Plaintiff would never have executed the Master Franchise
28

1 Agreement with Stratus Franchising and invested substantial amounts of time, money and effort
2 into the venture. As such, Plaintiff could have avoided its substantial investment and losses.

3 28. Knowing of its own wrongful selling practices, Stratus Franchising places the
4 following paragraph within Article I(C) of its Master Franchise Agreements with its master
5 franchisees (see Exhibit A):

6 Stratus expressly disclaims the making of, and Master Franchisee
7 acknowledges that it has not received or relied upon, any guarantee,
8 expressed or implied, as to the revenues, profits or success of the
9 business venture contemplated by this Agreement. Master
10 Franchisee acknowledges that it has no knowledge of any
11 representations by Stratus or its officers, directors, shareholders,
12 employees or agents that are contrary to those found in this
13 Agreement or contrary to any offering circular or other disclosure
14 document given to Master Franchisee pursuant to applicable law.

15 That paragraph, however, cannot unring the bell of the Fraud Defendants' deliberate and
16 misleading sales process to new master franchisees, like Plaintiff, who were directly told the
17 overreaching, untrue, and unsupported sales pitch and then subsequently reasonably relied thereon.
18 Further, this "disclaimer" provided by Stratus Franchising was a material misstatement, blatantly
19 false and known to be false by Stratus Franchising as the Fraud Defendants did indeed provide
20 earnings claims in writing, over the telephone, and in person in order to induce individuals and
21 entities, like Plaintiff, to become Stratus Franchising franchisees. Indeed, it is a violation of
22 federal and state law in connection with the sale of the franchises to Plaintiff to intentionally
23 misrepresent in the Master Franchise Agreement that earnings claims to franchisees were not
24 provided to Plaintiff.

25 Interference with Employee Relationship

26 29. The master franchise agreement that all master franchisees enter into with Stratus
27 Franchising, and the Master Franchise Agreement signed by Plaintiff attached hereto as Exhibit A
28 is no exception, provides that all master franchisees and their principals shall not, directly or
indirectly, "employ or seek to employ any person, who is at that time, employed by SBS or any of
its affiliates, any SBS Master Franchisee or SBS Unit Franchisee" or "induce any person to leave

1 his or her employment with SBS or any of its affiliates, any SBS Master Franchisee or SBS Unit
2 Franchisee" (the "Anti-Recruitment Provisions"). See Exhibit A attached hereto at Article XII.

3 30. The Anti-Recruitment Provisions establish a network of master franchisees with
4 separate, exclusive territories who are contractually obligated to quietly coexist without recruiting,
5 soliciting, or hiring each other's trained and productive employees. Because the Anti-Recruitment
6 Provisions eliminate such potential disruption and interference with a master franchisee's
7 employment relationships, inclusion of the Anti-Recruitment Provisions in the Master Franchise
8 Agreement increases the value of the exclusive territorial rights granted to each master franchisee.
9 The master franchisees pay valuable consideration for the economic benefit of the reciprocal
10 protection that the Anti-Recruitment Provisions provide. Further, the Master Franchise
11 Agreement includes provisions granting Stratus Franchising third-party-beneficiary status as to the
12 Anti-Recruitment Provisions through which Stratus Franchising indicates its intention to enforce
13 the Anti-Recruitment Provisions for the benefit of all master franchisees.

14 31. In or around November 2010, Defendants Stratus Franchising, Jarrett, Frese,
15 Farrell, and Ashton (collectively, the "Employee Interference Defendants") participated in,
16 approved of, and knew of and did not stop the solicitation, recruitment, and hiring of a productive
17 employee of Plaintiff who was then serving as Plaintiff's office manager and sales agent (the
18 "Office Manager and Sales Agent") by a master franchisee that operated in another Stratus
19 territory.

20 Interference with Client Relationships

21 32. Contrary to providing strong support and resources for Plaintiff's business that it
22 represented it would to Plaintiff both verbally and in writing, Defendant Stratus Franchising, along
23 with Defendants Jarrett, Frese, and Garcia (all collectively, the "Client Interference Defendants")
24 interfered with Plaintiff's customers (unit franchisees working cleaning and service jobs in Orange
25 County) in a detrimental manner.

26 33. Specifically, after Plaintiff requested the assistance of Stratus Franchising
27 concerning the violation of the Anti-Recruitment Provisions described above, which complaint
28 concerned a master franchisee that had multiple business relationships with Stratus Franchising

1 and its owners, rather than supporting Plaintiff and resolving the actual wrongful conduct the
2 Client Interference Defendants instituted, orchestrated, and participated in actions to interfere
3 detrimentally with the relationships Plaintiff had created with its customers, including through the
4 initiation and performance of an nontransparent and retaliatory "audit" of such customers which
5 asked questions, made suggestions, provided potential-litigation information, and opened
6 discussions with the intention of damaging Plaintiff's relationship with such customers.

7 Wrongful and Retaliatory Attempted Termination of the Master Franchise Agreement

8 34. In retaliation to Plaintiff's filing of the original complaint in this action, Defendants
9 have wrongfully attempted to terminate the Master Franchise Agreement.

10 35. On February 13, 2012, counsel for Defendant Stratus Franchising sent
11 correspondence to Plaintiff which purported to terminate the Master Franchise Agreement due to
12 failure to timely pay royalty payments and "various conduct which materially impairs the good
13 will [sic] associated with the Stratus trademark, trade name, service marks and other commercial
14 symbols."

15 36. The February 13, 2012 correspondence fails to establish any grounds for
16 termination, however, because the purported bases for termination are nonfactual, the purported
17 bases of termination are not bases for termination agreed upon in the Master Franchise Agreement,
18 and the procedures for termination agreed upon in the Master Franchise Agreement were not
19 followed, including notice-and-cure procedures.

20 Attorneys' Fees

21 37. As a result of the Defendants wrongful conduct, described herein, and Plaintiff's
22 need to protect and enforce its legal rights, Plaintiff has retained the undersigned attorneys and is
23 obligated to pay said firm attorneys' fees. Pursuant to the Master Franchise Agreement and
24 applicable statutory law, Plaintiff seeks to recover its attorneys' fees and costs from Defendants.

25 **FIRST CAUSE OF ACTION**

26 **(Against Defendants Stratus Franchising, Jarrett, Frese, Blair, and DOES 1-20 for Fraud)**

27 38. Plaintiff incorporates by reference the allegations of paragraphs 1 through 37 above
28 as if set forth fully at this point.

1 39. As fully set forth herein, and at all times material to this action, the Fraud
2 Defendants: (a) made numerous false representations to Plaintiff; (b) of existing material fact; (c)
3 with knowledge that such representations were false; (d) with the intent that the representations
4 induce injurious action; (e) with consequent injury to Plaintiffs; (f) acting in reasonable reliance
5 thereon, as described in detail above.

6 40. The Fraud Defendants' false representations of material fact were made knowingly
7 and intentionally and were intended to induce Plaintiff to enter into the Master Franchise
8 Agreement with Stratus Franchising and invest substantial sums of monies to open the Stratus
9 Building Solutions franchise.

10 41. The Fraud Defendants intended for Plaintiff to rely upon the foregoing
11 misrepresentations to its detriment.

12 42. In addition, the Fraud Defendants also concealed existing material facts from
13 Plaintiff in order to further induce Plaintiff to execute the Master Franchise Agreement and open
14 the Stratus Building Solutions franchise, and with full knowledge that disclosure of such material
15 facts would cause Plaintiff not to proceed with the transaction.

16 43. Plaintiffs acted in justifiable reliance on the Fraud Defendants' false representations
17 by entering into a franchise relationship with Stratus Franchising through the execution of the
18 Master Franchise Agreement.

19 44. Plaintiff would not have executed the Master Franchise Agreement and proceeded
20 to invest substantial sums of time, effort and money in the Stratus Building Solutions franchise
21 concept but for the above misrepresentations and purposeful concealment of material facts by the
22 Fraud Defendants.

23 45. As a direct, proximate and foreseeable result of the Fraud Defendants' fraudulent
24 conduct, Plaintiff has suffered substantial damages (in excess of \$25,000.00).

25 46. The aforementioned misconduct amounts to fraudulent, oppressive and malicious
26 conduct that subjected Plaintiff to unjust hardship in conscious disregard of Plaintiff's rights, and
27 with the intent to injure Plaintiff to the benefit of the Fraud Defendants, so as to justify an award
28

1 of exemplary and punitive damages. As a result thereof, Plaintiff is entitled to punitive damages
2 in an amount sufficient to deter the Fraud Defendants from such conduct in the future.

3 **SECOND CAUSE OF ACTION**

4 **(Against Defendants Stratus Franchising, Jarrett, Frese, Blair, and DOES 1-20**
5 **for Negligent Misrepresentation and Omission)**

6 47. Plaintiff incorporates by reference the allegations of paragraphs 1 through 46 above
7 as if set forth fully at this point.

8 48. As described in detail above, the Fraud Defendants negligently made
9 misrepresentations of existing material fact, without reasonable ground for believing them to be
10 true, and thereby, with intent to do so, induced Plaintiff to execute the Master Franchise
11 Agreement and invest substantial sums of time, effort and money to open the Stratus Building
12 Solutions franchise.

13 49. Had it not been for the negligent misrepresentations of existing material fact made
14 by the Fraud Defendants, Plaintiff would not have executed the Master Franchise Agreement with
15 Stratus Franchising.

16 50. As a direct, proximate and foreseeable result of the Fraud Defendants' wrongful and
17 negligent conduct, Plaintiff has suffered substantial damages (in excess of \$25,000.00).

18 **THIRD CAUSE OF ACTION**

19 **(Against Defendants Stratus Franchising, Jarrett, Frese, and DOES 1-20 for**
20 **Violation of California Franchise Investment Law)**

21 51. Plaintiff incorporates by reference the allegations of paragraphs 1 through 50 above
22 as if set forth fully at this point.

23 52. This is an action for violation of the California Franchise Investment Law, Cal.
24 Corp. Code §31000, *et. seq.* ("CFIL"). These regulations are meant to provide material
25 information about the franchisor and its franchise offering to the prospective franchisee in order to
26 promote successful business relationships and avoid fraud. *See* Cal. Corp. Code § 31001.

27 53. Pursuant to §31005 of the CFIL, the Master Franchise Agreement executed by
28 Plaintiff constitutes a "franchise."

1 allowed all of the conditions of the Master Franchise Agreement that are required to be performed
2 by it, except for those excused, waived or rendered impractical or impossible by Defendant's
3 conduct describe herein. Plaintiff remains ready, willing, and able to perform the remaining
4 executory terms of the Master Franchise Agreement.

5 65. In the absence of specific performance, Plaintiff has no adequate remedy at law and
6 monetary damages are insufficient because of the unique nature of the Master Franchise
7 Agreement and the unique ongoing-concern value of the purportedly-terminated business,
8 including as to the employees and representatives of Plaintiff.

9 **FIFTH CAUSE OF ACTION**

10 **(Against Defendant Stratus Franchising and DOES 1-20 for Declaratory Relief)**

11 66. Plaintiff incorporates by reference the allegations of paragraphs 1 through 65 above
12 as if set forth fully at this point.

13 67. An actual controversy has arisen and now exists between Plaintiff and Defendant in
14 that Defendant has sent correspondence to Plaintiff purporting to terminate the Master Franchise
15 Agreement while Plaintiff denies that any proper basis for such a termination exists and denies
16 that contractually agreed-upon procedures have been followed concerning such attempted
17 termination.

18 68. It is necessary and appropriate at this time for the Court to adjudge and decree the
19 respective rights and obligations of the parties so that the parties may ascertain their rights,
20 ascertain their duties, and resolve their disputes. Time is of the essence for this determination.

21 **SIXTH CAUSE OF ACTION**

22 **(Against Defendant Stratus Franchising and DOES 1-20 for Injunctive Relief)**

23 69. Plaintiff incorporates by reference the allegations of paragraphs 1 through 68 above
24 as if set forth fully at this point.

25 70. In retaliation to Plaintiff's filing of the original complaint in this action, Defendants
26 have wrongfully attempted to terminate the Master Franchise Agreement. On February 13, 2012,
27 counsel for Defendant Stratus Franchising sent correspondence to Plaintiff which purported to
28 terminate the Master Franchise Agreement due to failure to timely pay royalty payments and

1 "various conduct which materially impairs the good will [sic] associated with the Stratus
2 trademark, trade name, service marks and other commercial symbols." The February 13, 2012
3 correspondence fails to establish any grounds for termination, however, because the purported
4 bases for termination are nonfactual, the purported bases of termination are not bases for
5 termination agreed upon in the Master Franchise Agreement, and the procedures for termination
6 agreed upon in the Master Franchise Agreement were not followed, including notice-and-cure
7 procedures.

8 71. Equity should immediately prevent Defendant Stratus Franchising from acting
9 spitefully and finding litigation advantage from its scheme to attempt to terminate the Master
10 Franchise Agreement, a subject matter of this litigation. The harm in enjoining such a scheme
11 would be non-existent – indeed Defendant Stratus Franchising would instead profit further from
12 the status quo as Plaintiff would continue to run its franchise and remit royalty payments to
13 Defendant. On the other hand, allowing completion of the scheme would cause Plaintiff great and
14 irreparable injury.

15 72. Plaintiff has no adequate remedy at law for the injuries that it, its employees, and
16 its representatives would suffer as a result of Defendant Stratus Franchising's termination scheme.
17 It would be impossible for Plaintiff to determine the precise amount of damage if Defendant's
18 conduct were not restrained. Accordingly, Plaintiff requests, to avoid irreparable harm, that the
19 Court issue such injunctive relief as necessary to enjoin Defendant's termination scheme and
20 maintain the status quo.

21 **SEVENTH CAUSE OF ACTION**

22 **(Against Defendant Stratus Franchising and DOES 1-20 for Breach of Contract and**
23 **Breach of the Implied Covenant of Good Faith and Fair Dealing)**

24 73. Plaintiff incorporates by reference the allegations of paragraphs 1 through 72 above
25 as if set forth fully at this point.

26 74. Stratus Franchising has materially breached the terms of the Master Franchise
27 Agreement by, *inter alia*: selling a franchise to Plaintiff through the use of untrue statements and
28 material omissions (see Article VII(E)(5) of the Master Franchise Agreement ("SBS [Stratus

1 Franchising] must comply with all laws and regulations governing the sale of franchises . . ."));

2 selling the Orange County territory after another Stratus Building Solutions master franchisee had

3 been already acquiring customers in the territory; failing to enforce the Anti-Recruitment

4 Provisions so as to provide the bargained-for franchise network free from intra-network employee

5 poaching situations; and failing to provide the bargained-for support and resources, including

6 through actions to interfere with and damage Plaintiff's relationships with its customers.

7 75. Plaintiff fulfilled its obligations under the Master Franchise Agreement or

8 otherwise is excused from such obligations.

9 76. The Master Franchise Agreement between Plaintiff and Stratus Franchising gives

10 rise to express obligations and also give rise to a mutual implied covenant of good faith and fair

11 dealing between the parties. Under this covenant, each party has an obligation and duty to act

12 fairly towards the other, to do nothing destructive of the other party's right to enjoy the fruits of the

13 contract, and to do everything that the contract presupposes they will do to accomplish its purpose.

14 77. Through its actions, as fully set forth above, Stratus Franchising abused its

15 discretionary authority under the Master Franchise Agreement, failed to exercise such authority in

16 good faith and in a commercially reasonable manner, and dealt with Plaintiff in bad faith, in an

17 unfair manner, and in contravention of the intention and spirit of the Master Franchise Agreement.

18 78. The conduct of Stratus Franchising as described herein constitutes willful and

19 malicious breaches of its implied duty of good faith and fair dealing.

20 79. As a direct, proximate, and foreseeable consequence of Stratus Franchising's

21 material breach of contract and the implied duty of good faith and fair dealing, Plaintiff has

22 suffered substantial damages (in excess of \$25,000).

23 **EIGHTH CAUSE OF ACTION**

24 **(Against Defendants Stratus Franchising, Jarrett, Frese, Farrell,**

25 **Ashton, and DOES 1-20 for Intentional Interference With**

26 **Contractual Relations – Employment Relationship)**

27 80. Plaintiff incorporates by reference the allegations of paragraphs 1 through 79 above

28 as if set forth fully at this point

81. The Employee Interference Defendants had full knowledge of the master-servant employment contract that Plaintiff had with its Office Administrator and Sales Agent (the "Employee Contract").

82. By their wrongful participation in, approval of, and/or knowing inaction concerning the solicitation, recruitment, and hiring of Plaintiff's Office Administrator and Sales Agent by another master franchisee, as set forth above, the Employee Interference Defendants actually disrupted the Employee Contract and the benefits Plaintiff was to derive therefrom. As was their intention, the Employee Interference Defendants' wrongful actions interfered with and reduced the benefits of Plaintiff's exclusive contract with its Office Administrator and Sales Agent.

83. Plaintiff has suffered lost business, lost revenue, direct damages, and consequential damages as a result of Defendants' interference, and such damages are presently estimated to be in excess of \$135,000.

84. Defendants acted with oppression, fraud and/or malice. The despicable acts of the Employee Interference Defendants: (1) were undertaken with the Employee Interference Defendants' prior knowledge of Plaintiff's contractual relationship; and (2) were undertaken with the Employee Interference Defendants' prior knowledge of their own Anti-Recruitment Provisions governing the master franchisee that was poaching the employee. Due to these acts of the Employee Interference Defendants, and concerning the entity Defendant these acts were done with the authorization and ratification of their officers, agents, and/or representatives, Plaintiff is entitled to exemplary or punitive damages in an amount appropriate to punish and set an example of the Employee Interference Defendants.

NINTH CAUSE OF ACTION

(Against Defendants Stratus Franchising, Jarrett, Frese,

Garcia, and DOES 1-20 for Intentional Interference

With Contractual Relations – Client Relationships)

85. Plaintiff incorporates by reference the allegations of paragraphs 1 through 84 above as if set forth fully at this point

1 86. The Client Interference Defendants had full knowledge of the unit franchisee
2 contracts that Plaintiff had with its franchisee customers within its Orange County territory (the
3 "Client Contracts").

4 87. By their wrongful and retaliatory initiation of, orchestration of, and participated in
5 actions to interfere detrimentally with the relationships Plaintiff had created with its customers,
6 including through the initiation and performance of an undisclosed "audit" of such customers
7 which asked questions and opened discussions with the intention of damaging Plaintiff's
8 relationship with such customers, the Client Interference Defendants actually disrupted the Client
9 Contracts and the benefits Plaintiff was to derive therefrom. As was their intention, the Client
10 Interference Defendants' wrongful actions interfered with and reduced the benefits of Plaintiff's
11 exclusive Client Contracts.

12 88. Plaintiff has suffered lost business, lost revenue, direct damages, and consequential
13 damages as a result of Defendants' interference, and such damages are presently estimated to be in
14 excess of \$25,000.

15 89. Defendants acted with oppression, fraud and/or malice. The despicable acts of the
16 Client Interference Defendants: (1) were undertaken with Client Interference Defendants' prior
17 knowledge of Plaintiff's contractual relationships; and (2) were undertaken with the Client
18 Interference Defendants' prior knowledge of their own contractual obligations to Plaintiff to
19 provide support and resources, as opposed to undermining and damaging Plaintiff's contractual
20 relationships with its clients. Due to these acts of the Client Interference Defendants, and
21 concerning the entity Defendant these acts were done with the authorization and ratification of
22 their officers, agents, and/or representatives, Plaintiff is entitled to exemplary or punitive damages
23 in an amount appropriate to punish and set an example of the Client Interference Defendants.

24 **TENTH CAUSE OF ACTION**

25 **(Against Defendants Stratus Franchising, Jarrett, Frese, Farrell,**
26 **Ashton, and DOES 1-20 for Interference With Prospective**
27 **Economic Advantage – Employment Relationship)**
28

1 90. Plaintiff incorporates by reference the allegations of paragraphs 1 through 89 above
2 as if set forth fully at this point.

3 91. Prior to the solicitation of Plaintiff's Office Administrator and Sales Agent, Plaintiff
4 had a valid economic relationship with said employee that included reasonably probable future
5 economic benefits for Plaintiff and a distinct economic advantage to Plaintiff. The expectation of
6 an at-will employment contract is that of a future relationship between the parties to the contract.

7 92. During all relevant time periods, the Employee Interference Defendants were aware
8 and knew that an economic relationship between Plaintiff and the Office Administrator and Sales
9 Agent existed.

10 93. With awareness of Plaintiff's employment relationship with its Office
11 Administrator and Sales Agent as well as Plaintiff's distinct economic advantage arising
12 therefrom, the Employee Interference Defendants, with specific intention to do so, disrupted the
13 relationship and interfered with Plaintiff's economic advantage by their wrongful participation in,
14 approval of, and/or knowing inaction concerning the solicitation, recruitment, and hiring of
15 Plaintiff's Office Administrator and Sales Agent by another master franchisee.

16 94. As set forth above, the Employee Interference Defendants engaged in conduct that
17 was independently wrongful, being proscribed by either a constitution, statute, regulation or by
18 common law. The Employee Interference Defendants engaged in conduct that was wrongful
19 beyond the economic injury and disruption caused to the employment relationship because in so
20 doing their acts aided and abetted violations of unfair competition laws and related public policies,
21 violated their duties to act in good faith, as well as aided and abetted the breach of the Anti-
22 Recruitment Provisions.

23 95. Due to the Master Franchise Agreement and Plaintiff's participation in the Stratus
24 Building Solutions franchise network, an economic and "special relationship" exists between
25 Plaintiff and the Employee Interference Defendants due to which the Employee Interference
26 Defendants owed Plaintiff a duty of care not to act wrongfully as described herein.

96. As a direct and proximate result of Defendants' wrongful acts, Plaintiff has suffered economic injury to its business in an amount valued to be over \$135,000. Plaintiff's economic injury will be proven at trial.

97. Defendants acted with oppression, fraud and/or malice. The despicable acts of the Employee Interference Defendants: (1) were undertaken with Employee Interference Defendants' prior knowledge of Plaintiff's contractual relationship; and (2) were undertaken with the Employee Interference Defendants' prior knowledge of their own Anti-Recruitment Provisions governing the master franchisee that was poaching the employee. Due to these acts of the Employee Interference Defendants, and concerning the entity Defendant these acts were done with the authorization and ratification of their officers, agents, and/or representatives, Plaintiff is entitled to exemplary or punitive damages in an amount appropriate to punish and set an example of the Employee Interference Defendants.

ELEVENTH CAUSE OF ACTION

(Against Defendants Stratus Franchising, Jarrett, Frese, Garcia, and DOES 1-20 for
Interference With Prospective Economic Advantage (Client Relationships))

98. Plaintiff incorporates by reference the allegations of paragraphs 1 through 97 above as if set forth fully at this point.

99. Prior to disruption caused by the Client Interference Defendants, Plaintiff enjoyed valid economic relationships with Plaintiff's clients that included reasonably probable future economic benefits for Plaintiff and a distinct economic advantage to Plaintiff.

100. By their wrongful and retaliatory initiation of, orchestration of, and participated in actions to interfere detrimentally with the economic relationships Plaintiff had created with its customers, including through the initiation and performance of an undisclosed "audit" of such customers which asked questions and opened discussions with the intention of damaging Plaintiff's relationship with such customers, the Client Interference Defendants actually disrupted the Plaintiff-client economic relationships and the benefits Plaintiff was to derive therefrom. As was their intention, the Client Interference Defendants' wrongful actions interfered with and reduced the benefits of Plaintiff's exclusive client economic relationships.

1 101. During all relevant time periods, the Client Interference Defendants were aware and
2 knew that an economic relationship between Plaintiff and Plaintiff's clients existed.

3 102. With awareness of Plaintiff's economic relationships with its clients as well as
4 Plaintiff's distinct economic advantage arising therefrom, the Client Interference Defendants, with
5 specific intention to do so, disrupted the relationships and interfered with Plaintiff's economic
6 advantage by their wrongful and retaliatory initiation of, orchestration of, and participated in
7 actions to interfere detrimentally with the economic relationships Plaintiff had created with its
8 customers, including through the initiation and performance of an undisclosed "audit" of such
9 customers which asked questions and opened discussions with the intention of damaging
10 Plaintiff's relationship with such customers.

11 103. As set forth above, the Client Interference Defendants engaged in conduct that was
12 independently wrongful, being proscribed by either a constitution, statute, regulation or by
13 common law. The Client Interference Defendants engaged in conduct that was wrongful beyond
14 the economic injury and disruption caused to the client relationships because in so doing their acts
15 violated unfair business practices laws, violated their duties to act in good faith, and violated their
16 duties and obligations to Plaintiff to support and provide resources to Plaintiff within the Stratus
17 Building Solutions network.

18 104. Due to the Master Franchise Agreement and Plaintiff's participation in the Stratus
19 Building Solutions franchise network, an economic and "special relationship" exists between
20 Plaintiff and the Client Interference Defendants due to which the Client Interference Defendants
21 owed Plaintiff a duty of care not to act wrongfully as described herein.

22 105. As a direct and proximate result of Defendants' wrongful acts, Plaintiff has suffered
23 economic injury to its business in an amount valued to be over \$25,000. Plaintiff's economic
24 injury will be proven at trial.

25 106. Defendants acted with oppression, fraud and/or malice. The despicable acts of the
26 Client Interference Defendants: (1) were undertaken with Client Interference Defendants' prior
27 knowledge of Plaintiff's contractual relationships; and (2) were undertaken with the Client
28 Interference Defendants' prior knowledge of their own contractual obligations to Plaintiff to

1 provide support and resources, as opposed to undermining and damaging Plaintiff's contractual
2 relationships with its clients. Due to these acts of the Client Interference Defendants, and
3 concerning the entity Defendant these acts were done with the authorization and ratification of
4 their officers, agents, and/or representatives, Plaintiff is entitled to exemplary or punitive damages
5 in an amount appropriate to punish and set an example of the Client Interference Defendants.

6 **TWELFTH CAUSE OF ACTION**

7 **(Against All Defendants for Unfair Business Practices (Bus. & Prof. Code Section 17200))**

8 107. Plaintiff incorporates by reference the allegations of paragraphs 1 through 106
9 above as if set forth fully at this point.

10 108. California's Unfair Competition Law, Bus. & Prof. Code § 17200 *et seq.*, prohibits
11 any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or
12 misleading advertising.

13 109. At all times material to this action, and fully set forth above, Defendants have
14 repeatedly violated California's Unfair Competition Law by engaging in the unlawful, unfair and
15 deceptive business acts and practices. Defendants' actions described herein lack proper
16 justifications or motives.

17 110. As a result of the conduct of the Defendants, Plaintiff has suffered injury-in-fact
18 and has lost revenue, including lost profits, that would have otherwise been generated from the
19 sale and service of commercial-cleaning and maintenance-service franchises.

20 111. Defendants should be enjoined from continuing to engage in its unlawful, unfair
21 and deceptive business acts and practices and should be required to disgorge and restore to
22 Plaintiffs any and all money and property acquired by Defendants as a result of such unfair
23 business practices and other violations of California Bus. & Prof. Code § 17200 *et seq.*

24 **THIRTEENTH CAUSE OF ACTION**

25 **(Against Defendants Stratus Franchising and DOES 1-20 for Rescission)**

26 112. Plaintiff incorporates by reference the allegations of paragraphs 1 through 111
27 above as if set forth fully at this point.

113. As explained above, the Fraud Defendants have (a) made numerous false representations and concealed numerous information from Plaintiff; (b) of existing material fact; (c) with knowledge that such representations were false; (d) with the intent that the representations induce injurious action; (e) with consequent injury to Plaintiff; (f) acting in reasonable reliance thereon, as outlined above.

114. The Fraud Defendants' false representations and omissions of material fact were intended to induce Plaintiff to execute the Master Franchise Agreement with Stratus Franchising and invest substantial sums of monies in the opening and operating the franchised businesses.

115. Plaintiff did not know, have reason to know, nor could have discovered, through the exercise of reasonable diligence, the falsity of the Fraud Defendants' representations and the omission of material facts.

116. In reasonable and justifiable reliance upon the Fraud Defendants' misrepresentations and concealment of material facts, Plaintiff executed the Master Franchise Agreement and expended large sums of money to start up and operate the franchised business.

117. But for the Fraud Defendants' misrepresentations and concealment of material facts, Plaintiffs would not have executed the Master Franchise Agreement and proceeded to invest substantial sums of time, effort and money in the Stratus Building Solutions franchise.

118. As a direct, proximate and foreseeable result of the Fraud Defendants' misrepresentations and concealment of material facts, Plaintiff has suffered substantial damages.

PRAYER

WHEREFORE, Plaintiff Goldeneye Holdings, Inc., d/b/a Stratus Building Solutions of Orange County, prays for the following:


1. For actual, compensatory, consequential, and incidental damages according to proof;
2. For punitive and exemplary damages according to proof;
3. For an order requiring Defendant Stratus Franchising to specifically perform the Master Franchise Agreement;

- 1 4. For an order declaring the parties' obligations and responsibilities under the Master
- 2 Franchise Agreement, including a finding that Defendant Stratus Franchising has
- 3 not properly terminated the Master Franchise Agreement;
- 4 5. For an order enjoining Defendant Stratus Franchising from terminating the Master
- 5 Franchise Agreement so as to maintain the status quo during the pendency of this
- 6 action;
- 7 6. For an order enjoining Defendants from their unfair business practices, a
- 8 constructive trust, and restitutionary damages according to proof, including, but not
- 9 limited to, restoring to Plaintiff any and all money and property acquired by
- 10 Defendants as a result of such unfair business practices;
- 11 7. For an order of rescission of the Master Franchise Agreement and any related
- 12 agreements and for rescissionary damages, including, but not limited to, recovery
- 13 of all monies tendered to Defendants by Plaintiff in connection with the purchase
- 14 and operation of Plaintiff's Stratus Building Solutions franchise and forgiveness of
- 15 any obligations of any kind allegedly then owing to Stratus Franchising by
- 16 Plaintiff;
- 17 8. For interest according to proof;
- 18 9. For attorneys' fees and costs incurred; and
- 19 10. For such other and further relief as this Court deems just and proper.

20
21 Dated: February 27, 2011

CLEMENT AND HO.
A PROFESSIONAL LAW CORPORATION

22
23 By



RANDALL J. CLEMENT
Attorneys for Plaintiff GOLDENEYE HOLDINGS,
INC., d/b/a STRATUS BUILDING SOLUTIONS
OF ORANGE COUNTY