

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

IN THE MARION SUPERIOR COURT  
CIVIL DIVISION, ROOM  
CAUSE NO. 49D \_\_\_ - \_\_\_ -PL-

NIDIA MARTINEZ, )  
MARIA MANRIQUEZ, ELSA )  
DE LA CRUZ, ENI CRUZ RODRIGUEZ, )  
VICTOR GARCIA, LAURA ANDOLON, )  
RONNY FUNES, THERESA ESCOBEDO, )  
LORENZO RODRIGUEZ, FAUSTINA )  
NEGRETE, YOLANDA ALVAREZ, )  
JOSE LEON, )  
On behalf of themselves and others )  
Similarly situated )  
Plaintiffs, )

49D02 12 06 PL 0 23 299

**FILED**

(175) JUN 08 2012

*Elizabeth J. White*  
Clerk of the Marion Superior Court

vs.

JURY TRIAL DEMANDED

SHAMROCK BUILDING SERVICES, )  
INC., STRATUS FRANCHISING, L.L.C., )  
KEVIN SPELLACY, JERRY WENGER, )  
and PAMELLA MARTINS, )  
Defendants. )

**CLASS ACTION COMPLAINT AND JURY DEMAND**

**I. INTRODUCTION**

Plaintiffs Nidia Solis Martinez, Maria Manriquez, Elsa De la Cruz, Eni Cruz Rodriguez, Victor Garcia, Laura Andolon, Ronny Funes, Theresa Escobedo, Lorenzo Rodriguez, Faustina Negrete, Yolanda Alvarez, Jose Leon and the classes of persons similarly situated as described herein, by counsel, for their claims against Defendants Shamrock Building Services, Inc., Stratus Franchising, L.L.C., Kevin Spellacy, Jerry Wenger and Pamela Martins state as follows:

1. The United States of America has become the greatest country in the world through the hard work of those dreaming to make a better life for their families.

State and Federal laws reflect the importance of protecting the rights of the common laborer and their aspirations to realize the “American Dream.” These laws include the Indiana Franchise Act, Truth-in-Lending Laws, Indiana’s Deceptive Consumer Practices laws and Indiana employment laws that protect workers from employers that seek to avoid paying their workers.

2. This case involves unscrupulous Defendants who ignore these laws, and instead oppress hundreds of American workers just to make themselves richer. Their unscrupulous strategy is to label their workers “franchisees,” and have them sign a “franchise agreement.” Using this misguided and illegal strategy, they have evaded the consumer and worker protection laws that form the foundation of American society. Instead, they pay their workers a fraction of the minimum wage, make illegal deductions from payments to their workers, and evade taxes owed to the Indiana and Federal governments.

3. This purpose of this lawsuit is to put an end to Defendants’ outrageous and illegal practices, and to obtain compensation for the common laborers the Defendants have exploited.

## **II. THE PARTIES**

4. Plaintiff Nidia Solis Martinez (“Martinez”) is an individual residing in Indianapolis, Marion County, Indiana.

5. Plaintiff Maria Manriquez (“Manriquez”) is an individual residing in Indianapolis, Marion County, Indiana.

6. Plaintiff Elsa De la Cruz (“De la Cruz”) is an individual residing in Indianapolis, Marion County, Indiana.
7. Plaintiff Eni Cruz Rodriguez (“Cruz Rodriguez”) is an individual residing in Indianapolis, Marion County, Indiana.
8. Plaintiff Victor Garcia (“Garcia”) is an individual residing in Indianapolis, Marion County, Indiana.
9. Plaintiff Laura Andolon (“Andolon”) is an individual residing in Indianapolis, Marion County, Indiana.
10. Plaintiff Ronny Funes (“Funes”) is an individual residing in Indianapolis, Marion County, Indiana.
11. Plaintiff Theresa Escobedo (“Escobedo”) is an individual residing in Indianapolis, Marion County, Indiana.
12. Plaintiff Lorenzo Rodriguez (“Rodriguez”) is an individual residing in Indianapolis, Marion County, Indiana.
13. Plaintiff Faustina Negrete (“Negrete”) is an individual residing in Indianapolis, Marion County, Indiana.
14. Plaintiff Yolanda Alvarez (“Alvarez”) is an individual residing in Indianapolis, Marion County, Indiana.
15. Plaintiff Jose Leon (“Leon”) is an individual residing in Indianapolis, Marion County, Indiana.
16. This is a class action that the above-named plaintiffs (“Plaintiffs”) bring on behalf of themselves and on behalf of all others similarly situated, namely:

All individuals in Indiana who have paid a franchise fee to Stratus (the “Class”).

17. The class contains two Sub-Classes, which are not mutually exclusive, namely:
  - a. The Cleaning Worker Sub-Class: All members of the Class who performed work on behalf of Stratus
  - b. The Borrower Sub-Class: All members of the Class to whom Stratus extended credit
18. The Class and Sub-Classes meet all of the requirements of Rule 23 of the Indiana Rules of Trial Procedure.
19. Defendant Shamrock Building Services, Inc. (“Shamrock”) is an Indiana corporation with its principal business address at 8606 Allisonville Road, Suite, Ste. 215, Indianapolis, Marion County, IN 46250. Shamrock does business under the assumed names of Stratus Building Solutions, Stratus Building Solutions of Indianapolis, Stratus Building Solutions of Indiana and Stratus Indy (collectively “Stratus”).
20. Defendant Stratus Franchising, L.L.C. (“Stratus Franchising”) is a Missouri limited liability company located at 1976 Innerbelt Business Center Drive St. Louis, MO 63114.
21. Defendant Kevin Spellacy (“Spellacy”) is an individual residing in Indiana, and who has an ownership interest in and who manages Stratus.
22. Spellacy is an officer of Stratus and responsible for making the employment decisions at issue in this lawsuit.
23. Defendant Jerry Wenger (“Wenger”) is an individual residing in Indiana and who is a “regional director” of Stratus.

24. Defendant Pamela Martins is an individual residing in Kentucky and who is, or was at relevant times, the “director of franchise development” of Stratus in Indiana.

### **III. GENERAL ALLEGATIONS**

25. Stratus Franchising is a nation-wide company offering commercial cleaning and janitorial services through “master franchises” in metropolitan areas around the country.

26. Stratus Franchising’s business plan provides that master franchisees have the exclusive right to offer cleaning and janitorial services in their designated geographical area under the Stratus name. Stratus Franchising provides a business model, training, assistance, support and template Franchise Disclosure Document and form contracts for master franchisees.

27. Under the Stratus Franchising business plan, as described on the Stratus Franchising website, within their local markets, master franchisees “provide customers, training, field support, monthly customer billing – and collect the revenue.” The business plan is based on selling “sub-franchises” where the “cleaning workers provide the cleaning and maintenance services to the customers[.]”

28. Although Stratus and Stratus Franchising describe the cleaning workers as “franchises,” the cleaning workers are, in fact and according to the legal definition, employees of Stratus.

29. In October 2008, Stratus Franchising awarded Spellacy a master franchise for the Indianapolis area. Spellacy thereafter organized Shamrock and began conducting business under Shamrock’s assumed “Stratus” names in Indiana.

30. Under the Stratus Franchising business plan, Spellacy / Stratus offered and continues to offer “sub-franchises” to cleaning workers in Indiana.

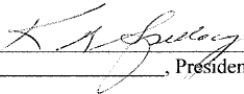
**A. Stratus Flaunts Indiana Franchise Law**

31. Defendant Stratus is a janitorial services company that contracts with owners of commercial buildings to clean offices, schools and medical clinics. Because janitorial work is often an unattractive occupation, Stratus needs to offer incentives to prospective workers. Unlike legitimate businesses, who would simply offer a higher wage to attract workers for an undesirable job, Stratus uses a different scheme. It offers prospective workers “guaranteed business” and “guaranteed financing” and the prospect of making thousands of dollars. To make matters worse, when hiring cleaning workers, Stratus makes them first pay a “franchise fee” to purchase a “franchise.” These “franchise fees” often represent a worker’s entire life savings; yet they get nothing in return, other than the right to be subjected to further exploitation by Defendants’ illegal scheme.

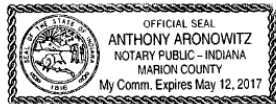
32. The offering and sale of franchises in Indiana is subject to State Law, and Stratus has routinely failed to comply with Indiana Law in connection with the selling of its franchises. In fact, Kevin G. Spellacy, President of Shamrock Building Services, Inc., has even gone so far as to knowingly swear to false statements made to the Indiana Secretary of State, including the following:

**AFFIDAVIT**

1. My name is Kevin G. Spellacy and I am President of Shamrock Building Services, Inc.
2. I have personal knowledge of all the offers and sales made by Shamrock Building Services Inc.
3. I can swear and otherwise affirm that Shamrock Building Services, Inc. has not made any offer for sale or sold any franchises in the State of Indiana.
4. Further, affiant, sayeth not.

  
\_\_\_\_\_  
\_\_\_\_\_, President

Sworn and subscribed before me this  
20 day of October, 2009.



This representation was knowingly false, because as of October 20, 2009, Stratus had offered franchises for the sale and had actually sold franchises in the State of Indiana. This is confirmed by the following record of the Indiana Secretary of State:

Name Searched On:**SHAMROCK BUILDING SERVICES (Legal)****Current Information**Entity Legal Name:**SHAMROCK BUILDING SERVICES, INC.**Entity Address:**8606 ALLISONVILLE RD., STE. 215, INDIANAPOLIS, IN 46250****General Entity Information:**Control Number: **2008071600190**Status: **Active**Entity Type: **For-Profit Domestic Corporation**Entity Creation Date: **7/16/2008 12:43:35 PM**Entity Date to Expire:Entity Inactive Date:**This entity is current with Business Entity Report(s).**Other Names for this Entity:

Date	Name (Type)
10/6/2008	STRATUS BUILDING SOLUTIONS (Assumed))
10/6/2008	STRATUS BUILDINGS SOLUTIONS OF INDIANAPOLIS (Assumed))
10/6/2008	STRATUS BUILDING SOLUTIONS OF INDIANA (Assumed))
10/6/2008	STRATUS INDY (Assumed))

Stratus' offer and sale of franchises prior to October 20, 2009 is also evidenced by the following representative document signed by Mr. Spellacy on September 25, 2009 in connection with the sale of one or more franchises:



September 25, 2009

To: Owner/Operators of Stratus-Indianapolis

Re: Account Sales by Franchisee

Recently, there has been several questions in regards to our owner/operators going after accounts and building their "own book of business". Per policy and procedures, the following conditions apply when soliciting business on your own.

- 20.1 Before you or anyone in your employment, including agents or sub-contractors, begin soliciting business, you, or anyone who may make a sales presentation on behalf of you, must make sure that the presentation that is used to secure additional business is a **Stratus** presentation. Any misrepresentation of the **Stratus** program is strictly prohibited. You, or anyone who makes a sales presentation on your behalf, may only solicit business for you and cannot represent themselves as an agent for other Franchisees or other individuals.
- 20.2 When personally contacting a present or prospective account, you and your representatives are required to dress appropriately. Appropriate dress would be a business suit, or dress slacks, sport coat and tie for men and a business suit, or dress slacks and blouse or dress for women.
- 20.3 All advertising, promotional material or sales presentation materials must be approved by **Stratus** prior to its use.
- 20.4 All proposals (bids) must be approved by **Stratus**, including final approval and adjustment to the billing price, without exception, in order to maintain consistency, accuracy, and quality of appearance.
- 20.5 All proposals (bids) must be typed at the Regional Office without exception. You must give us at least 48 hours to prepare and type the proposal. There is no charge for this service.
- 20.6 You will not knowingly interfere, solicit, or otherwise contact in any manner a customer of **Stratus** or of another **Stratus** Franchisee unless requested to do so in writing by the Franchisor. If you or your representative solicits a potential customer and discovers that the customer will be receiving, or is already in receipt of, a **Stratus** proposal you will not pursue any further solicitation of that account and will withdraw any proposal until a decision has been made on the proposal currently under consideration, or for a period of time not less than 90 days from the date of the proposal. Under **NO CIRCUMSTANCES** is the Franchisee permitted to present a bid with a billing lower than the one presented by the Franchisor or its representative, unless the Franchisee receives consent to do so in writing from the Franchisor.
- 20.7 You will not solicit accounts outside the MSA of the Regional Office with whom your Franchise Agreement was signed, without written consent from **Stratus**.

In closing, and in order to make sure that all is done correctly and fairly for all parties, **Stratus-Indianapolis** has agreed to do the following for any Franchisee that is truly interested in building their own "book of business" and with the "blessing" and "support" of our Regional Office.

1. A Sales Training Class and Manual will be conducted free of charge in our office on a "scheduled" basis with the Franchisee and/or their representative.
2. Any Proposal generated will be done by our Regional Office without charge to Franchisee.
3. Any "award" of business will not be subject to Sales and Marketing Fee's unless the Franchisee that was "awarded" that business, decides they really don't want to handle that account for various reasons. The Sales and Marketing Fee would then apply to any other Franchisee that agreed to take that account, that Fee would then be split 50/50 with the Regional Office and the Franchisee responsible for "award" of the account.
4. Just to be clear, if you are awarded an account, we will assist you in preparing the proposal at no charge to you, we will handle all billing, payment issues, oversight management, insurance documentation etc... for our standard % breakdown of 10% for Management, 5% for Royalty, 5% for Insurance. **You will not be charged for sales and marketing fee by the Regional Office.** All conditions apply to accounts you have been "awarded" just as if the Regional Office had been "awarded" the account. Meaning, if you don't perform up to task, your customer requests a transfer, or other violations of policies and procedures, that account is subject to transfer.

In the beginning, we are even willing to walk the prospective account with you, show you how to gather the proper information needed to put together a pricing guideline that is in keeping with **Stratus** estimating/bidding procedures and formulate the operational guidelines and specifications needed to not only "sell the account" but to "operate it" after sale.

If you have any additional comments or questions, please do not hesitate to contact me at anytime.

Sincerely,

  
Kevin Spellacy

Stratus's offer and sale of franchises prior to October 20, 2009 is further evidenced by the following notice dated in June, 2009, sent to one or more franchisees and advising them of a mandatory meeting.

**STRATUS** Building Solutions

8606 Allisonville Rd. ~ Indianapolis, IN 46250 Phone: 317.572.9200 www.stratusclean.com

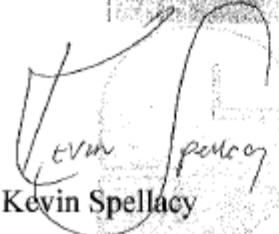
Fecha: 18 de Junio del 2009

Por medio de la presente se les comunica que habra una junta con la presencia **obligatoria** de todos los franquiciados en el Martes, **dia 30 de Junio** a las **4:00 PM**.

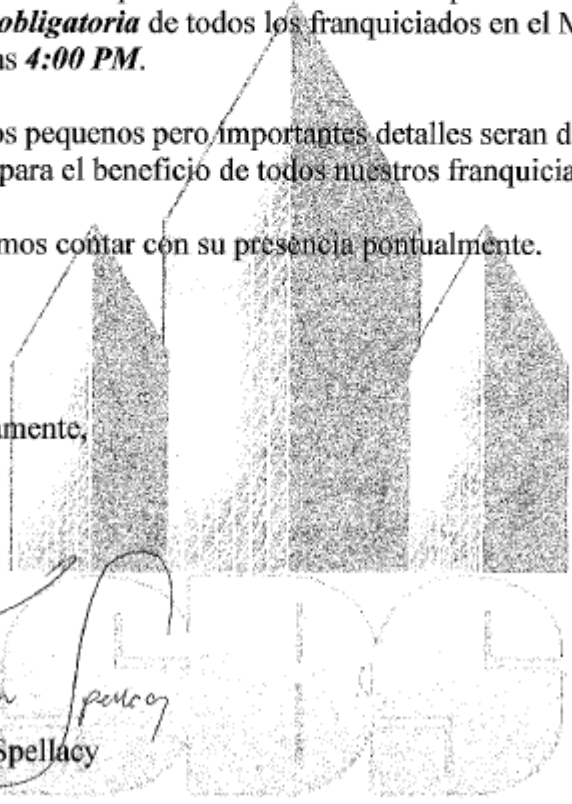
Algunos pequenos pero importantes detalles seran discutidos y recordados para el beneficio de todos nuestros franquiciados.

Esperamos contar con su presencia puntualmente.

Sinceramente,



Kevin Spellacy



33. The Indiana Franchise Act, I.C. § 23-2-2.5-9, provides that no person may offer or sell a franchise in Indiana unless the franchise is registered with the Indiana Secretary of State as proscribed in the Indiana Franchise Act, I.C. § 23-2-2.5 et seq., which includes the filing of required disclosure documents.

34. Stratus did not make any filing that could be considered a franchise registration until at least October 21, 2009. Even if that filing constituted a franchise registration, it was effective only for one year, and Stratus failed to renew this registration when it expired in October 2010.

35. Stratus attempted to submit a franchise registration renewal on January 21, 2011. Therefore, even if Stratus had an earlier registration, there was a gap in Stratus's registration with the Indiana Secretary of State from October 21, 2010 to January 20, 2011.

36. Stratus, Kevin Spellacy, Jerry Wenger and Pamella Martins violated the Indiana Franchise Act by offering and selling franchises without having a franchise registration with the Indiana Secretary of State.

37. The Indiana Franchise Act, I.C. § 23-2-2.5-9 further requires that no person no person may offer or sell any franchise without providing a disclosure statement, as defined by the statute and including copies of all proposed contracts, to the prospective franchisee at least 10 days before execution of the franchise agreement or acceptance of the franchisee's consideration.

38. Defendants Stratus, Stratus Franchising, Kevin Spellacy, Jerry Wenger and Pamella Martins violated the Indiana Franchise Act by offering and selling franchises without providing a disclosure statement to prospective franchisees, including the

Plaintiffs, in a manner provided by the law and, in many cases, without providing any type of disclosure statement at all.

39. A person who knowingly violates the Indiana Franchise Act commits a Class C felony. I.C. § 23-2-2.5-37.

40. Furthermore, “It is unlawful for any person in connection with the offer, sale or purchase of any franchise, or in any filing made with the commissioner, directly or indirectly: ... to make any untrue statements of material fact ...” I.C. § 23-2-2.5-27.

41. Moreover, where a contract contravenes a statute, the court’s responsibility is to declare the contract void. The Indiana Supreme Court has recognized that a franchise agreement that violates the Indiana Franchise Act is, at a minimum, voidable by the court. *Continental Basketball Association v. Ellenstein Enterprises, Inc.*, 669 N.E.2d 134, 139-41 (Ind. 1996).

42. Stratus has consistently failed to provide the Indiana Secretary of State, prospective franchisees and the public with disclosures that are legally required by state and federal law.

43. Indiana law requires that a prospective franchisor include a Disclosure Document, also called a Franchise Disclosure Document (“FDD”), with its registration to the Indiana Secretary of State and to prospective franchisees in the manner provided by 16 C.F.R. 436, a federal regulation that mandates detailed disclosures from franchisors. See I.C. § 23-2-2.5-13.

44. The Federal Trade Commission, through 16 C.F.R. 436, additionally requires that franchisors provide the FDD to prospective franchisees. The Federal Trade Commission has deemed failure to provide the FDD to a prospective franchisee to be an

unfair and deceptive act. 16 C.F.R. 436.2. The Federal Trade Commission has deemed failure to include all the required information in the FDD to a prospective franchisee to be an unfair and deceptive act or practice. 16 C.F.R. 436.6(a).

45. When Stratus submitted its franchise registration application to the Indiana Secretary of State on October 20, 2009, it failed to include a Franchise Disclosure Document as required by Indiana law.

46. On October 29, 2009, the Indiana Secretary of State sent a deficiency notice to Defendant Kevin Spellacy / Stratus to inform him that the required FDD was not submitted with the franchise registration. Neither Spellacy nor Stratus, however, ever responded.

47. The Indiana Secretary of State never received any FDD from Stratus until January 2011, when Kevin Spellacy attempted to “renew” the Stratus franchise “registration.”

48. That and subsequent FDDs filed with the Indiana Secretary of State and FDDs provided to prospective franchisees include untrue statements of material facts and have omitted facts which were necessary under the circumstances, and which were therefore deceptive.

49. Namely, Stratus’s FDDs did not comply with disclosure requirements of I.C. § 23-2-2.5-13 and 16 C.F.R. 436 in at least the following manners:

- a. Item 2 fails to disclose the required information regarding the employment history of the principles. Notably, Defendant Wenger’s prior employment at Jan-Pro is not disclosed. This is a

material omission since Jan-Pro has been sued in several states for illegal acts similar to those described in this Complaint.

- b. Stratus should have disclosed in Item 3 that it had been subject to administrative action from the Indiana Secretary of State in the form of non-compliance notices for its deficiencies in registration. Beginning in 2011, Item 3 should have disclosed lawsuits filed against Stratus Franchising in St. Louis and California.
- c. Item 5 makes financial performance representations, as defined by 16 C.F.R. 436 without providing the information that creates a reasonable basis for the representation. These financial performance representations are in the form of a chart that purports to offer a prospective franchisee a certain level of income per year or month.
- d. Item 5 fails to include the cost of a start-up kit, which can range from \$550 to \$2000, in listing the start-up costs.
- e. Item 8 fails to disclose and/or is misleading regarding its relationships with suppliers and the requirement that franchisees purchase “Stratus brand” supplies. Moreover, Stratus’s FDD fail to disclose that its parent company, Stratus Franchising, has profited from a relationship with a supplier called Nyco Company, which is disclosed in a franchise registration document of Stratus Franchising.

- f. Stratus fails to disclose the number of Indiana Stratus franchises in 2010 and 2011 in Item 20. The most recent year for which this information is provided is 2009.
- g. Stratus provides misleading and incomplete information in Item 20 under the required list of current franchisees. The earliest FDD available, lists 20 individuals on the “Stratus Franchisee List as of October, 2009.” A later version of the FDD lists 35 individuals on the “Stratus Franchisee List as of October, 2010,” however seven individuals that appear on the 2009 list do not appear on the 2010 list. These seven individuals are not listed as “former franchisees” which is also a required item. Other franchisees are wholly omitted from the lists.
- h. Stratus’s FDD filed with the Indiana Secretary of State in January 2012 wholly omits any listing current or former franchisees. These pages are blank under the headings “Stratus Franchisee List as of October, 2010” and “List of Former Franchisees.”
- i. None of Stratus’s FDDs provide Financial Statements, which are required by I.C. § 23-2-2.5-13 and 16 C.F.R. 436. Stratus’s FDDs merely contain the heading “Exhibit H Financial Statements” and have only placeholder language and/or instructions on how to complete this section. In addition to Stratus’s financial statements, the FDDs omit the financial statements of Stratus Franchising, which are also required by I.C. § 23-2-2.5-13 and 16 C.F.R. 436.

- j. Stratus fails to include complete copies of all prospective contracts with franchisees. Although a “Unit Franchise Agreement” has been included in the FDD, this is not the actual contract given to many franchisees.

50. The purpose of providing the FDD to the Indiana Secretary of State and prospective franchisees is to equalize the bargaining power and information between the franchisor and franchisee. Since a franchisor will have much more information than the prospective franchisee, the FDD requirements ensure that prospective franchisee are given material, truthful and complete information in order to evaluate the franchise before he or she invests substantial money, time and effort. For example, lists of current and former franchisees give the prospective franchisee access to sources of information to verify the franchisor’s claims during solicitation.

51. Stratus’s unequal bargaining position goes beyond its failure to comply with disclosure laws. Stratus routinely presents FDDs and franchise contracts to persons that it knows do not speak or read English and/or have little business experience. In fact, Stratus targets non-English speakers by advertising in Spanish.

52. Notwithstanding the illegality of Stratus’ “franchises,” it continues to use them as a tax avoidance scheme and as a cover for evading worker protection laws. Stratus preys upon persons that aspire to the American dream of success through hard work and careful investment of their hard-earned life savings. Stratus convinces these persons to pay it thousands of dollars, and in some cases, their entire life savings, in exchange for “guaranteed accounts” from a “franchise agreement” while doing janitorial work for Stratus. However, instead of complying with the law, Stratus pays them a fixed



monthly amount for each job, but only after deducting financing fees, “account acquisition fees,” “royalties,” “administration fees,” “insurance,” “bid and negotiation fees,” “account transfer fees,” “name change fees,” “retraining fees,” and charges for “starter kits” and cleaning supplies. The result is that Stratus’ workers are paid far less than what is required by the law, and they are deprived of the benefits legally due to employees. For example, in a representative month, Plaintiff Manriquez and other employees of Stratus spent at least **200 hours** for Stratus cleaning the Urology of Indiana clinic. At the minimum wage of \$7.25 per hour, Stratus should have paid a gross amount of at least **\$1,450**. However, Stratus paid only **\$194.17, less than 13.4% of what is required by law:**

<b>STRATUS</b>			
Building Solutions Franchisee Report			
Maria Manriquez			
<u>Monthly Billing</u>			
<u>Account Name:</u> Urology of Indiana			\$ 725.00
<b>Total Monthly Billing</b>			<b>725.00</b>
<u>Initial Cleans/Extra Works/Specials</u>			
Total I.C./E.W./Specials			0.00
<b>Total Gross Billing</b>			<b>725.00</b>
<u>Deductions:</u>			
Franchise Payment:	3 of 36		173.33
Royalty	5%		36.25
Administration Fee	10%		72.50
Insurance	5%		36.25
I.C./Extra Work/Specials	10%		0.00
Total Account Payments			0.00
Total Customer Credits			0.00
Total Supply Invoices			212.50
<u>Additional Income</u>			
Total Additional Income			0.00
Total Deductions			<b>530.83</b>
	Due Franchisee		<b>194.17</b>
<u>Account Payments</u>			
Total Account Payments			0.00
<u>Customer Credits, Penalties, and Fines</u>			
Total			0.00
<u>Supply Invoices</u>			
Invoice startet kit	4 of 4	Amount	\$ 212.50
<b>Total Supply Invoices</b>			<b>212.50</b>

**B. Stratus' Operations in Indiana**

53. In early 2009, Stratus began placing Spanish language radio and newspaper ads in Indiana Latino media outlets. These ads sought cleaning workers.

54. Stratus's advertisements seeking cleaning workers state "clients guaranteed" and "financing guaranteed." The ads often direct potential cleaning workers to [www.stratusclean.com](http://www.stratusclean.com), which is maintained by Stratus Franchising.
55. The [www.stratusclean.com](http://www.stratusclean.com) site states that "franchisees" are "guaranteed customers" and "cashflow protections" "in an area of your choice[.]"
56. Despite soliciting cleaning workers for "franchisees" throughout 2009, Spellacy and Stratus did seek to file a Uniform Franchise Registration with the Indiana Secretary of State, as required by I.C. 23-2-2.5-9, until October 21, 2009.
57. Stratus' incomplete Uniform Franchise Registration filed on October 21, 2009 listed the name of the franchisor as "Kevin G. Spellacy" and listed his intention to do business as Stratus Building Solutions of Indiana.
58. Since 2009, Stratus and Spellacy have knowingly made numerous material misrepresentations and omissions in the legally required in franchise registration and disclosure statements. For example, Spellacy provided a signed statement that no franchises had been offered for sale prior to October 2009, yet a franchise disclosure document contained a "Stratus Franchisee List as of October, 2009" containing the names of twenty individuals.
59. None of the FDDs contain financial statements of Stratus or a franchisee. Such financial statements are material information necessary for prospective franchisees to evaluate whether to work with Stratus.
60. Stratus offers different levels of "sub-franchise," sometimes referred to as "packages," depending on the amount of money a cleaning worker wants to earn. Each level is based on a "guaranteed" amount of monthly income, ranging from \$500

to \$6,000 per month, and requires the cleaning worker to make a down payment based on amount of income “guaranteed” by Stratus.

61. Stratus offers to, and does, finance all or a portion of the “franchise fee” a rate of 15% or more per year. However, despite the fact that Stratus’ sales of “franchises” are to persons for their personal and household benefit, Stratus does not provide the Truth-in-Lending disclosures required by law. Moreover, Stratus’s financing agreements are misleading or confusing as to the terms and conditions of the loans.
62. Pursuant to the business plan of Stratus Franchising and Stratus, Stratus performs all marketing, negotiates cleaning contracts with customers, creates cleaning instructions and policies, handles all billing and receipt of money, and pays the cleaning workers.
63. The cleaning workers are never paid directly by any customer; instead they are paid by Stratus.
64. Stratus is always the middleman between the cleaning workers and the cleaning clients. Stratus does not allow the cleaning workers to directly receive cleaning instructions or complaints from the cleaning clients.
65. Stratus does not pay cleaning workers at the minimum wage. Instead, they pay cleaning workers a portion of the amounts that Stratus collects from its customers.
66. Before paying cleaning workers, Stratus deducts amounts it claims represent financed franchise payments, financed “account acquisition fees,” “royalties,” “administration fees,” “insurance,” fees if the cleaning worker provided extra service,” “bid and negotiation fees,” “account transfer fees,” “name change fees,” “advertising fees” “retraining fees,” charges for cleaning supplies and a “starter kit,” and fines that are charged for customer complaints and account transfers

67. By the time these deductions are taken into account, Stratus often pays its cleaning workers a rate below the required minimum wage.
68. In addition, Stratus only pays its cleaning workers only once per month on the last day of each month for the work performed in the preceding month.
69. In the course of soliciting a cleaning worker to work for Stratus, Stratus promises “guaranteed revenues” and “guaranteed accounts” as well as promising to allow cleaning workers to choose the area where they work.
70. In the course of soliciting a cleaning worker to work for Stratus, Stratus also encourages prospective workers to have members of their family and household assist with the cleaning work.
71. Stratus requires its cleaning workers to sign a “franchise agreement” and pay substantial cash payment before it gives cleaning workers any work.
72. While Stratus promises “guaranteed” revenues and accounts to prospective cleaning workers, Stratus, in fact at the time it makes these representations, does not have enough accounts or revenue to fulfill its guarantees.
73. Stratus has a financial incentive to sign up additional cleaning workers, even when Stratus has no work for them to perform, in order to collect additional “franchise fees.”
74. Stratus continues to sign up new franchisees and collect new franchise fees even though current franchisees are not provided the level of income that Stratus has promised them.

75. When Stratus charges a cleaning worker a “franchise fee,” Stratus’ representations that it has enough customers and business to assign to the cleaning worker to allow the worker to reach the “guaranteed” income level are false and misleading.
76. Moreover, Stratus engages in practices of offering cleaning workers work that requires long travel distances and accounts that are unprofitable and/or known to be unacceptable so that the cleaning worker cannot possibly reach the income level promised by Stratus.
77. Stratus intentionally offers workers jobs that Stratus knows the workers will reject in order to place blame for Stratus’s failure to fulfill the promised income levels upon the workers.
78. When a cleaning worker complains about not receiving the level of income Stratus promised, Stratus routinely responds by telling the worker that he or she will be “moved to the back of the line” behind other Stratus cleaning workers before being offered additional work. Another response from Stratus is that the franchisee must wait or else he or she will lose all their money paid as their “franchise fee.”
79. Stratus often requires an “additional account fee” when a cleaning worker is assigned a new Stratus client. Stratus offers financing of the “additional account fee” at the rate of 15% per year. Again, no Truth-in-Lending disclosures are made in connection with these financings.
80. Stratus engages in a practice of unreasonably and unilaterally removing workers from working at client locations. Stratus has a financial incentive to do so because it can then collect another “additional account fee” when it assigns a different worker to the client location.

81. These tactics are referred to as “churning” and describes a practice whereby Stratus attempts to collect the maximum amount of “franchise fees” and “additional account fees” from many cleaning workers. By signing up additional cleaning workers, Stratus reaps in new “franchise fees.” New “franchisees” are assigned to displace existing cleaning workers, who are often told that their work was deficient. Then, if the first cleaning worker wants substitute work, Stratus requires him or her to pay an “additional account fees.” Thus, the more frequently Stratus reassigns its cleaning workers to different customer sites, the more “additional account fees” Stratus collects from the cleaning workers.
82. Like a pyramid investment scheme, Stratus rakes in profits by inducing new cleaning workers to pay franchise fees and “additional account fees” based upon promises of “guaranteed” return on their investment. Stratus does not inform the workers that while the cleaning workers provide their labor and capital investment, Stratus’s scheme is designed to reap all the benefits and strip the cleaning workers of their savings while working for less than minimum wage.
83. Stratus requires its workers to use only Stratus-provided cleaning supplies, which are picked up at Stratus’s office. Workers are required to pay for the cleaning supplies. Stratus grossly overcharges workers for these supplies. For the example Stratus requires its cleaning workers to pay \$10 or more for a package of cleaning rags, even though identical rags cost \$2 at a Dollar General store.
84. Stratus has purposely targeted non-English speaking persons in Indiana, who not experienced in business.

85. While Stratus solicits cleaning workers in Spanish, Stratus does not provide Spanish language versions of its contracts or of franchise disclosure documents.
86. Stratus maintains a high level of control over its cleaning workers and their work through training, inspections, required policies, and other controls. Some examples of the extensive control exercised by Stratus include:
- a. Negotiating and executing contracts with customers that detail what cleaning work will be performed and then instructing cleaning workers only to clean what is covered by the contract. For example, Stratus may negotiate with a the customer about whether a microwave or dirty dishes are to be cleaned by the Stratus workers;
  - b. Receiving all payments from customers for cleaning services;
  - c. All cleaning jobs are identified by Stratus and assigned to cleaning workers;
  - d. Paying cleaning workers for work they perform, which contradicts the notion that a Stratus “franchisee” is its own business and is therefore entitled to be paid directly by customers for which cleaning services are provided;
  - e. Stratus has the unilateral right to instruct cleaning workers to stop working at specific locations;
  - f. Cleaning workers have no right to independently seek out cleaning work independent of Stratus, as doing so would violate non-competition policies imposed by Stratus;



- g. Requiring all cleaning workers to wear a uniform supplied by Stratus that identifies Stratus to customers as the source of the cleaning services;
- h. Providing cleaning workers with detailed training and operations manual, including topics such as “Dusting Procedures,” “Restroom Care,” “Carpet Maintenance Procedures,” “Vacuum Cleaning Procedures,” and others, creating Stratus’s “systems standards;”
- i. Requiring cleaning workers to report to Stratus when extra cleaning work must be performed for a customer so that Stratus can assess the customer additional charges;
- j. Maintaining a right to require workers to undergo “re-training.”
- k. Requiring that workers be bound by and not to deviate from Stratus’s “systems standards;”
- l. Requiring workers to agree that any new system or procedure developed by the workers be immediately disclosed to Stratus and that the new system or procedure immediately becomes the property of Stratus;
- m. Requiring that workers use only cleaning products provided by, approved by and purchased from Stratus, including an “Equipment and Supply Starter Kit” and Stratus brand chemicals;
- n. Requiring that workers use only equipment provided by, approved by and/or purchased from Stratus, including such detailed requirements as a specific type of vacuum cleaner, broom and cleaning rags;
- o. Maintaining a right to inspect all customer sites cleaned by the workers at any time;

- p. Maintaining a right to terminate a customer account of a worker upon customer complaint, if the cleaning worker fails to follow Stratus's "systems standards;"
- q. Maintaining a right to levy fines and penalties against workers if customers complain about cleaning and for other reasons;
- r. Requiring workers to agree not to compete, directly or indirectly, with Stratus during the term of the franchise contract and for two years after termination of the contract;
- s. Requiring workers to sign a "Drug & Alcohol Policy;"
- t. Deducting up to \$200 from the compensation due the cleaning worker for each instance when the worker is unable to clean the facilities of a Stratus customer.

87. In the janitorial and cleaning industry, work is usually done under the direction of an employer or principle with supervision.

88. Janitorial and cleaning work is low skill and does not require a professional specialist.

89. Stratus requires that the its cleaning workers use the instrumentalities and tools provided, supplied and/or approved by Stratus.

90. Stratus selects and directs the cleaning workers to the place of work. The workers are allowed to store their cleaning equipment at the customer's location.

91. Stratus cleaning workers typically work for Stratus for long periods of time.

92. Stratus pays cleaning workers at the end of each month for work performed in the preceding month. Payments to cleaning workers bear some relationship to the amount of work performed by the workers.

93. Stratus is in the regular business of providing janitorial and cleaning services for commercial buildings.
94. The relationship between Stratus and its cleaning workers is that between master and servant and/or employer – employee.
95. Stratus and Stratus Franchising are for-profit businesses.
96. Stratus misclassifies its cleaning workers as independent contractors, however, they do not meet the test for independent contractors under Indiana law or as set forth in *Moberly v. Day*, 757 N.E.2d 1007 (Ind. 2001).
97. Because of their misclassification, the cleaning workers do not receive the benefits that inure from the employment relationship under Indiana law, specifically, benefits provided by the Indiana Wage Payment and Wage Claims laws, the prohibition on illegal deductions from wages, unemployment insurance and workers' compensation.

**C. ALLEGATIONS RELATING TO PLAINTIFF MARTINEZ**

98. Martinez heard Stratus radio advertisements on a Spanish language radio station.
99. Martinez met Defendant Martins at a Stratus marketing booth at the Indiana Hispanic Heritage Fair. Martins offered a Stratus franchise to Martinez, but Martinez did not purchase a franchise at the time.
100. Martins thereafter called Martinez repeatedly to ask her to become a Stratus cleaning worker.
101. Martinez is not fluent in English, but Martins communicated with her in Spanish.
102. Martins described Stratus as an opportunity for her family and that her husband, daughter and son-in-law could help do the work. Martins encouraged Martinez to take

advantage of a limited time offer, whereby Martinez could get started as a Stratus franchisee for only \$500. Martins told Martinez that the minimum cost would soon increase to \$1,000.

103. Martinez attended a Stratus orientation/training class in Spanish.

104. Martins told Martinez that if she invested \$500 in a Stratus franchise, Stratus would provide her with \$500 a month in income. Martins told Martinez that Stratus was able to provide cleaning locations near her home.

105. Stratus never provided Martinez with a Stratus Franchise Disclosure Document.

106. Martinez paid Stratus \$500 cash to become a franchisee.

107. Martinez was not aware that, in addition to the \$500 cash, in order to become a “franchisee” she had agreed to finance the remainder of the franchisee fee and would have 36 monthly payments of \$86.66, totaling \$3,119.76, deducted from her pay. At no time was she provided with a Truth-in-Lending disclosure.

108. Prior to paying the \$500, Stratus did not tell Martinez that she would be required to purchase a “starter kit,” the cost of which would also be deducted from her pay in six monthly payments of \$145.83, totally \$886.98.

109. About one month after paying the \$500, Stratus assigned Martinez her first customer: Community Tissue. This job was to pay \$175 per month. It required cleaning on Tuesdays and Fridays each week and took one and a half hours per clean.

110. At about the same time, Stratus assigned her a second customer: Industrial Tire. This job was to pay \$175 per month. It required cleaning once per week and took one hour per clean.

111. To obtain the cleaning work at Industrial Tire, Stratus required Martinez to sign an “additional account agreement” whereby Martinez agreed to finance an additional fee of \$125. She agreed to that Stratus could deduct four payments of \$31.25 from her monthly pay in order to finance this amount. At no time was she provided with a Truth-in-Lending disclosure.
112. A few months later, Stratus assigned another customer to Martinez: Reynolds. This job was to pay \$1,800 per month. It required cleaning Monday through Saturday, six days per week and took four hours per day with Martinez’s husband, daughter and son-in-law assisting her.
113. Stratus required Martinez to sign another “additional account agreement” whereby she agreed to finance an additional fee of \$6,606, providing for 18 payments of \$367.00 to be deducted from her pay. At no time did Stratus provide a Truth-in-Lending disclosure.
114. While working at Reynolds, Stratus instructed Martinez that she was not to clean the microwave or dirty dishes, despite requests from Reynolds personnel that she clean these items. A Stratus representative told Martinez not to clean these items because it was not part of Stratus’ contract with Reynolds.
115. Stratus required Martinez to make a report to Stratus each time Reynolds requested extra cleaning work so that Stratus could bill Reynolds additional fees.
116. At times, Stratus “fined” Martinez for “customer complaints.” On one occasion, \$50 was deducted from her paycheck due to a customer complaint about “vacuum issues,” but Martinez was never told anything about the complaint or the deduction, and she never agreed to the deduction.

117. In January 2011, a Stratus representative informed Martinez that she would no longer be cleaning Industrial Tire or Reynolds. She was told this was because Reynolds had complained about her work, however, she overheard a Reynolds employee complaining about Stratus' charges for extra work that Reynolds requested.
118. Though Stratus told Martinez she would make \$2,325 per month to clean these locations, after deductions for "franchise payment," "account payments," "royalties," "administration fees," "insurance," and charges for "starter kits" and supplies, in a representative month, Stratus only paid Martinez \$1,260.01.
119. In June 2011, Martinez was assigned another account: Carepoint. This job was understood to be on a temporary basis and ended in August 2011.
120. Presently, Stratus only provides cleaning work to Martinez at one location, and, after deductions, only pays her \$186.34 per month, far less than the \$500 per month Stratus promised when she signed up.

**D. ALLEGATIONS RELATING TO PLAINTIFF MANRIQUEZ**

121. Plaintiff Manriquez heard a radio advertisement for Stratus on a Spanish language Indianapolis radio station.
122. Manriquez called the number from the Stratus radio advertisement to inquire about the opportunity that was advertised.
123. Manriquez is not fluent in English. Defendant Martins spoke Spanish and discussed Stratus in Spanish over a three month period with Manriquez.
124. Manriquez was looking for an opportunity to invest all the money she had saved. She hoped to grow this nest egg into an amount sufficient to pay for her teenage son

to attend college. Based upon the information provided by Stratus, Manriquez decided that the Stratus opportunity would provide enough money to meet this goal.

125. Manriquez decided to work for Stratus. She selected the “SBS-30” plan that would provide annual income of \$30,000 and monthly income of \$2,500. This plan required a “down payment” of \$7,000 and an additional \$5,000 to be paid over thirty-six months at an interest rate of 15% per year, as follows:

Basic Level Franchise Plans							
Plan#	Customer Accounts		Full Payment	Cash	Down Pymt. (Cash pymt. At signing)	Remainder Financed @ 15% per year	Total
	Income(measured in gross annual billing						
SBS-30	\$30,000.00	\$2,500.00	\$9,600.00		\$7,000.00	\$5000(\$173.3 3/MONTH	\$12,000.00

126. Manriquez paid Stratus the down payment of \$7,000. This was all of the money Manriquez had saved for her son’s college fund.

127. Additionally, Manriquez financed the remainder of the franchise fee through Stratus. At no time was Manriquez given a Truth-in-Lending Disclosure.

128. Manriquez was not presented with a copy of a Stratus franchise disclosure statement at least 10 days prior to paying Stratus the down payment.

129. Manriquez attended Stratus training and completed a final test, which was conducted in Spanish.

130. Although Stratus provided a Spanish speaking sales person, Defendant Martins, and training in Spanish, Stratus never provided Spanish language copies of the contracts and other documents that Manriquez signed.

131. Stratus told Manriquez that it had sufficient customers and accounts for Stratus to provide Manriquez with guaranteed income of \$2,500 per month within four months of her down payment.
132. Three months after paying the \$7,000, Stratus had not provided any work or income to Manriquez. Manriquez complained to Martins.
133. After the complaint, Martins offered an account to Manriquez, but the account was impossible for Manriquez to accept because it required six days of work per week. Stratus had known the account was unacceptable because Manriquez had told Stratus that she could only work five days per week. Martins told Manriquez that she would have to “go to the back of the line” since she refused the account that was offered and that she had “no rights.”
134. A few months later, Manriquez received her first account from Stratus, which was to clean a health clinic (“the Clinic”). It must be cleaned five days a week and requires approximately 9 man hours per day.
135. While working on the clinic account, Manriquez was required to travel to Stratus’s office to pick up required cleaning chemicals two times per month. Each trip took approximately two hours.
136. Soon after beginning work at the clinic, Manriquez complained to Martins about not having been given a job sufficient to allow her to earn the \$2,500 month promised in the “SBS-30” level franchise. Martins again told Manriquez that she “has no rights” and “should not complain.”
137. Several months later, Stratus offered Manriquez more work cleaning a school (“the School”). Stratus required Manriquez to pay an “additional account fee” of



\$3,825 to accept the new account. Manriquez accepted the school account and agreed to finance the \$3,825 through Stratus.

138. Manriquez began work at the School, which had to be cleaned five days per week for four hours each day. Occasionally, it required additional man hours due to special events at the school.

139. About eight months after beginning to work at the school, Defendant Wenger told Manriquez that Stratus was terminating Manriquez from working at the School. Wenger promised to give Manriquez another account as soon as possible.

140. Wenger told Manriquez's husband, Jose Matifacio, that Stratus had received a complaint from the School principal about performance at the school. However, Matifacio knew the principal well, and the principal had never made any complaints.

141. Manriquez was later told by a Stratus employee that Stratus had removed Manriquez from the school account because another cleaning worker had requested the School account and Stratus gave the School account to the other worker in exchange for a fee paid to Stratus by the other cleaning worker.

142. Manriquez requested a refund of the "additional account fee" she had paid to receive the school contract, but Wenger refused.

143. Thus, Stratus "churned" the school account, taking freely Manriquez's "additional account fee" and then collecting additional franchise and/or "additional account fee" from another cleaning worker.

144. At the present date, the only work Stratus provides to Manriquez is the Clinic. Stratus pays Manriquez, after deductions, only \$406.67 per month, far less than the

monthly income of \$2,500 that was promised to her when she signed up and paid the \$7,000 fee.

**E. ALLEGATIONS RELATING TO PLAINTIFF DE LA CRUZ**

145. De la Cruz heard about Stratus from a Spanish language radio advertisement.
146. De la Cruz started speaking with Defendant Martins and attended an informational meeting which was conducted in Spanish by Martins. Martins contacted her several times seeking to have De la Cruz become a franchisee.
147. De la Cruz did not speak much English at all at the time. Martins communicated with her in Spanish.
148. Despite the fact that Stratus did not have an effective Franchise Registration with the Indiana Secretary of State, Stratus presented De la Cruz with a “Unit Franchise Agreement.” De la Cruz and Defendant Martins, as “franchise executive” for Stratus, entered into a franchise agreement.
149. On that same date, De la Cruz paid \$1,000 cash and signed a promissory note to finance another \$2,000, at an interest rate of 15%. The note called for 36 monthly payments of \$69.33. At no time did Stratus provide Truth-in-Lending disclosures.
150. The promissory note does not disclose that the monthly payments would be deducted from De la Cruz’s pay.
151. Under the franchise plan that De la Cruz selected, Stratus represented that it could provide her with income of \$500 per month.
152. Stratus did provide De la Cruz with a proper Franchise Disclosure Document in compliance with the Indiana Franchise Act.

153. Stratus assigned De la Cruz her first account: Allergy Center. It was to be cleaned one day a week for two hours. The job paid \$175 per month.
154. The first full month check she received for work at Allergy Center was only for \$70.67 after Stratus's deductions, far less than the \$500 per month Stratus promised. She did not receive payment for the month of April until the last day of May.
155. After De la Cruz complained to Stratus that she was not receiving the income they promised her, Stratus assigned her to work at two more locations: Carmel Glass and Mirror and CTL Engineering. With these additional accounts, Stratus claimed they were now paying her \$585 per month, however, after deductions she received only \$323.67 each month.
156. Stratus required De la Cruz to pay an additional account fee for the CTL account. The fee was financed, and Stratus deducted five monthly payments of \$75 from De la Cruz's paychecks. At no time did Stratus provide Truth-in-Lending disclosures.
157. De la Cruz entered a new agreement with Stratus to "upgrade" her franchise plan to an "SBS-12" franchise plan, which Stratus represented would provide monthly income of \$1,000 per month. De la Cruz signed an "account acquisition agreement" with the new account listed as "TBD" (to be determined). The agreement shows that De la Cruz owed Stratus \$5,000 for the "upgrade," that she paid \$2,000 cash, and would finance the remaining balance through five deductions of \$600 each from her pay. The agreement does not include a Truth-in-Lending disclosure.
158. Three months later, Stratus provided De la Cruz cleaning work at two additional locations: TCU and Alpha Sigma Tau. With the addition of these two locations,

Stratus claimed to provide her with income of \$1,240 per month, but after deduction, she only received \$922.67 in a representative month.

159. De la Cruz also performed work at another location in: Coldwell Bank.
160. The locations that Stratus has assigned to De la Cruz are spread all over Indianapolis and required her to spend significant time driving between them.
161. To reach the level of income she had been promised, Stratus told De la Cruz that she would have to “upgrade her package.” She paid Stratus an additional \$2,000 in cash based upon Stratus’s promise that it had the ability to assign her more work and give her more income each month.
162. As of today’s date, Stratus has not assigned her any more work since her \$2,000 payment. In fact, Stratus has done the opposite and taken away income.
163. In October 2011, Stratus deducted \$50 from De la Cruz’ paycheck allegedly due to a customer complaint.
164. In March 2012, a Stratus representative, suddenly and without any notice of any problems with her work, informed her that De la Cruz would no longer be working at TCU or Coldwell Bank.
165. De la Cruz presently cleans at three locations: Allergy Center, CTL, Carmel Glass and Alpha Sigma Tau, and Stratus pays her far less than the amounts promised at the time she paid her franchise fee and the subsequent fees to “upgrade” her package.

**F. ALLEGATIONS RELATING TO PLAINTIFF CRUZ RODRIGUEZ**

166. Cruz Rodriguez heard about Stratus from a Spanish language radio advertisement.

167. Cruz Rodriguez speaks minimal English. Stratus provided a Spanish speaking salesperson, but all legal documents were presented to her in English.
168. On or about March 28, 2011, Cruz Rodriguez paid Stratus \$1,000, purchased a Stratus franchise and signed a promissory note for \$2,000. Cruz Rodriguez selected a “SBS-6 Franchise plan,” and Stratus represented to her that Stratus had the capability to provide \$750 per month in income to her under this plan.
169. A “franchise agreement” signed by Cruz Rodriguez, is comprised of pages numbered 22, 27, 29 and 35, which are pages that have blanks to be filled in when compared to Stratus’s sample contract provided to the Indiana Secretary of State.
170. The terms of the note are contradictory. For example, it states “the principle sum of 2,000<sup>00</sup> dollars (\$69.33) with interest from the date hereof at the rate of fifteen Percent (0%) per annum on the unpaid balance of said principal sum until paid.” (italicized portions are handwritten). At no time did Stratus provide Truth-in-Lending disclosures.
171. Stratus never provided Cruz Rodriguez with a Franchise Disclosure Document.
172. On or about June 5, 2011, Stratus assigned Cruz Rodriguez her first job: Day Nursery, which was to pay \$1,300 per month. It was cleaned Monday thru Friday every week and took five hours each time.
173. The first month Cruz Rodriguez worked at Day Nursery, however, Stratus only paid her \$894.72 after deductions.
174. On or about August 13, 2011, Defendant Wenger arrived at the Day Nursery and demanded the keys. Wenger informed Cruz Rodriguez that she was no longer

working that job. Wenger spoke only in English, and Cruz Rodriguez did not understand the explanation Wenger gave.

175. Wenger later mailed a letter to Cruz Rodriguez, apparently explaining the termination. The letter also stated that “I felt the most fair way for closing this account from your franchise was to simply not pay your for the days worked from 8/1/11 till 8/12/11.”
176. In addition to failing to pay Cruz Rodriguez for work at Day Nursery in August 2011, after deductions, Stratus paid her only \$141.28 for her work during the entire month of July 2011.
177. On or about July 28, 2011, Stratus assigned Cruz Rodriguez another job: Dellon Auto Group, which was to pay \$5,759 per month. It was cleaned Monday thru Saturday every week and took seven to eight hours each time.
178. Cruz Rodriguez began cleaning at Dellon on July 28, 2011, however, she was never paid for her work there in July 2011.
179. On September 1, 2011, after she had already worked at Dellon for over a month, Defendant Wenger presented Cruz Rodriguez with an “account acquisition agreement.” The agreement stated that Cruz Rodriguez owed Stratus a new account fee of \$19,147.50 and that Cruz Rodriguez would finance this amount through a “loan option” of 24 monthly payments of \$798. At no time did Stratus provide a Truth-in-Lending disclosure.
180. Defendant Wenger, through a translator, told Cruz Rodriguez she had to sign the account acquisition agreement to continue her work. After she had signed the account acquisition agreement, Cruz Rodriguez asked Wenger to confirm that she

would receive \$5,750 each month for cleaning Dellon, which was the amount listed as “monthly billing” on the agreement. Wenger explained that she was incorrect. She would not receive the amount listed a “monthly billing.” Rather, Wenger explained that Cruz Rodriguez would actually receive only \$2,391 per month after all of Stratus’s deductions.

181. Stratus also required Cruz Rodriguez to purchase a plate washing machine for \$750 to be used as cleaning equipment at Dellon.
182. On or about October 15, 2011, Wenger and another Stratus manager arrived at Dellon and rudely informed Cruz Rodriguez that she would no longer work at that location
183. Cruz Rodriguez, who could not understand what Wenger said, attempted to finish her cleaning work for that day. Wenger called the police, and Cruz Rodriguez left Dellon when she could not understand what Wenger told the police.
184. Cruz Rodriguez was not allowed to take any of her equipment or her \$750 plate washing machine with her when she left. She was never allowed to return to Dellon to pick up her property despite her requests to do so.
185. Stratus’s final payment to Cruz Rodriguez made deductions for a “starter kit balance” of \$656.25 and \$2,033.75 of the “account acceptance note for Dellon.” For work from September 1 to October 15, 2011, after Stratus’s deductions, Stratus paid her only \$1,750.
186. Cruz Rodriguez has not received any additional work or income from Stratus and has been refused a refund and the return of the plate washing machine and her equipment and supplies, and her franchise fees / account acquisition fees.

**G. ALLEGATIONS RELATING TO PLAINTIFFS GARCIA AND ANDOLON**

187. Garcia first heard about Stratus from a Spanish language radio advertisement.
188. Garcia obtained Martins' phone number and called to find out more about Stratus. Martins told Garcia that Stratus had a lot of jobs available and would be able to provide him with a lot of work. Martins told Garcia that Stratus was a "good business" and "would be there for you."
189. English is not Garcia's first language, however, Martins communicated with him in Spanish.
190. Garcia and his wife, Andolon, decided to invest the \$4,160 they had accumulated in savings, in the purchase of a Stratus franchise.
191. Garcia and Andolon paid Stratus \$4,160 for a Stratus franchise, and signed a document having page numbers 22, 27, 29 and 35. These pages appear to be the only pages that have blanks to be filled in when compared to Stratus's sample contract provided to the Indiana Secretary of State.
192. Stratus provided Garcia and Andolon with a Franchise Disclosure Statement, however, the FDD provided was incomplete and was not provided at least 10 days before the franchise agreement was signed, as required by the Indiana Franchise Act.
193. Stratus represented that it was capable of providing Garcia and Andolon with income of \$750 per month.
194. Within a month, Stratus assigned Garcia and Andolon a customer account: CCN Church, which was to pay \$650 per month. It was cleaned twice a week for two and a half to three hours.



195. A few months after starting to work at the CCN Church, Jim, a Stratus employee who was Garcia's supervisor, appeared at the job site. Jim stated there had been complaints and stated that Garcia had been terminated from the location. Jim demanded that Garcia turn over the keys to the building.
196. A few months later, Stratus assigned another location to Garcia and Andolon: American Floors, which was to pay \$195 per month. It was cleaned once a week for one and half hours each clean.
197. Prior to signing the franchise agreement, a Stratus representative had told Garcia that he could use his own equipment and purchase cleaning supplies where ever he wanted. After Garcia and Andolon began working at American Floors, Stratus suddenly decided that it needed to start deducting a fee for a "starter kit" of equipment and supplies, even though Garcia and Andolon had already worked at another location. Stratus deducted 6 monthly payments of \$145.83 from Garcia's pay checks, for a total of \$927.78 for the "starter kit."
198. After deductions for the starter kit and other deductions, Stratus paid Garcia and Andolon only \$10.17 for the first month worked at American Floors.
199. The next month, Stratus assigned another location to Garcia and Andolon: Sports of All Sorts ("Sports"), which was to pay \$255 per month. It was cleaned once a week for three hours each clean.
200. With the Sports and American Floors locations, Stratus claimed to pay Garcia and Andolon \$450 per month, however, after deductions, Garcia and Andolon only receive \$214.17, far less that the \$750 per month that Stratus claimed it could provide to Garcia and Andolon.

201. About four months after beginning work at Sports, a Stratus employee, Samuel, appeared at the location and told Garcia he would no longer work at that location.
202. Since that time, Stratus has only provided work to Garcia and Andolon that is supposed to pay \$195 per month. After deductions, they receive \$156 per month, far less than the \$750 per month Stratus represented it could provide.
203. Stratus has also deducted \$50 fines from Garcia and Andolon's pay on at least two occasions.

#### **H. ALLEGATIONS RELATING TO PLAINTIFF FUNES**

204. On or about May 12, 2011, Plaintiff Funes paid Stratus \$1,000 in cash for a Stratus franchise, co-signing with his wife Marlene Hernandez, signed a franchise agreement for an "SBS-6" plan.
205. Stratus represented it was capable of providing Funes with at least \$500 per month income under the "SBS-6 Franchise plan."
206. The document signed by Funes, however, includes only pages numbered 22, 27, 29 and 35, which appear to be the only pages that have blanks to be filled in when compared to Stratus's sample contract provided to the Indiana Secretary of State.
207. On or about May 14, 2011, Funes, co-signing with his wife Marlene Hernandez, signed a promissory note for \$2,000, which along with their \$1,000 cash payment was to be the franchise fee. The terms of the note are contradictory. For example, it states "the principle sum of 2,000<sup>00</sup> dollars (\$69.33) with interest from the date hereof at the rate of fifteen Percent (0%) per annum on the unpaid balance of said principal sum

until paid.” (italicized portions are handwritten). At no time did Stratus provide Truth-in-Lending disclosures.

208. Stratus never provided Funes with a Franchise Disclosure Document.
209. In October 2011, Stratus offered Funes one cleaning job. The job, however, was too far away from Funes’s home and would not pay nearly the \$500 a month he had been promised, so it was rejected.
210. In December 2011, Stratus offered Funes another cleaning job. The job, however, was again too far away from Funes’s home and would pay only \$175 per month, not including Stratus’s deductions. He turned it down.
211. Funes contacted Stratus numerous times attempting to have Stratus assign him work to allow him to earn the income that was promised to him. Stratus, however, has never provided Funes with any income.
212. Funes finally spoke to Defendant Wenger regarding his contract. Funes requested the work and income that Stratus promised. Wenger told him that Status was not interested in working with him any longer. When Funes asked for a refund, Wenger laughed at him and refused.

**I. ALLEGATIONS RELATING TO PLAINTIFF ESCOBEDO**

213. On or about July 21, 2011, Plaintiff Escobedo paid Stratus \$3,200 in cash to purchase an “SBS-9” Stratus franchise.
214. Stratus represented it was capable of providing Escobedo with \$750 per month income under the “SBS-9 Franchise plan.”

215. A document signed by Escobedo appears to be missing numerous pages. The page numbers are 22, 27, 29 and 35, which appear to be the only pages that have blanks to be filled in when compared to Stratus's sample contract provided to the Indiana Secretary of State.
216. On or about July 27, 2011, Escobedo signed a promissory note for \$2,000, which along with her \$3,200 cash payment was to be her franchise fee. The terms of the note are contradictory. For example, it states "the principle sum of *Two thousand* dollars (\$2,000<sup>00</sup>) with interest from the date hereof at the rate of fifteen Percent (0%) per annum on the unpaid balance of said principal sum until paid." (italicized portions are handwritten). At no time did Stratus provide Truth-in-Lending disclosures.
217. Escobedo borrowed \$1,500 of the \$3,200 cash she paid from a family member. She has since repaid the family member \$2,000.
218. Stratus never provided Escobedo with a Franchise Disclosure Document.
219. Within the first three months of signing the contract, Stratus offered her Escobedo one cleaning job. The job, however, was more than a one and a half hour drive from Escobedo's home so she turned it down.
220. Soon thereafter, Escobedo discussed another job with Stratus. She made an appointment to check the location for the next morning. When she called the next morning to confirm the location, a Stratus employee told her that another franchisee had already accepted the job. Two days later, the same Stratus employee called her back and said the other franchisee had turned down the job and it would now be available to her. Because of the conflicting statements by Stratus, Escobedo asked

Stratus “Why are you playing games with me?” and declined to check the location or take this cleaning work.

221. By November 2011, Escobedo had not received any income or work from Stratus. She requested a refund, and Stratus refused to refund her money. A Stratus employee told her that she had been put at the back of the line, that she would have to wait and that Stratus would not refund her money.

**J. ALLEGATIONS RELATING TO PLAINTIFF RODRIGUEZ**

222. Plaintiff Rodriguez first learned about Stratus when researching on the Internet. He found [www.stratusclean.com](http://www.stratusclean.com) and called the phone number listed to see if Stratus Franchising had an Indianapolis contact.

223. Rodriguez paid Stratus \$6,500 for an “SBS-18 Franchise plan.”

224. Stratus represented it was capable of providing Rodriguez with \$1,500 per month income under the “SBS-18 Franchise plan.”

225. A document signed by Rodriguez has pages numbered 22, 27, 29 and 35, which appear to be the only pages that have blanks to be filled in when compared to Stratus’s sample contract provided to the Indiana Secretary of State.

226. Stratus never provided Rodriguez with a Franchise Disclosure Document nor was Stratus registered with the Indiana Secretary of State when Rodriguez paid Stratus the franchise fee.

227. Although Stratus has given Rodriguez cleaning work, Stratus has never given enough work to reach the \$1,500 it represented it was capable of providing.

228. Stratus unreasonably terminated Rodriguez from cleaning client locations with no advance notice of any complaints.
229. Stratus required Rodriguez to pay an additional account fee of \$400 to begin cleaning one location: Bone Dry.
230. Stratus charged Rodriguez \$650 for a “starter kit.”
231. At present, Rodriguez cleans three locations for Stratus: Hydronic Steam, Carpenter Realtors and Bone Dry. Though Stratus claims these accounts provide \$779 per month in income, Stratus actually pays Rodriguez \$607.62 after deductions in a representative month, far less than the \$1m500 per month Stratus represented it was capable of providing when Rodriguez purchased the Stratus franchise.
232. Rodriguez has requested a refund on several occasions. Each time, Stratus refused.

**K. ALLEGATIONS RELATING TO PLAINTIFF NEGRETE**

233. On or about June 11, 2010, Plaintiff Negrete paid Stratus \$10,800 for an “SBS-36 Franchise plan.” Defendant Martins represented herself as “director of franchise development” for Stratus at the time.
234. Stratus represented it was capable of providing Negrete with \$3,000 per month income under the “SBS-36 Franchise plan.”
235. Stratus never provided Negrete with a Franchise Disclosure Document.
236. Negrete speaks limited English, but Martins communicated with her in Spanish. Stratus, however, provided all legal documents in English.

237. Two months after signing the agreement, Stratus assigned Negrete two cleaning jobs: Primrose Noblesville and Primerose Bridgewater. Stratus claimed to pay her \$1,864 for these accounts, however, after deductions, Stratus actually paid her much less.
238. The next month, Stratus assigned Negrete another cleaning job: Day Nursery, which was to pay \$1,295. Stratus described the job as taking two hours per day, however, when Negrete began the job, she found that it took four hours each day. It was cleaned Monday through Friday.
239. Stratus required Negrete to pay an additional account fee of \$432 to begin working at Day Nursery. Negrete paid the \$432 in cash.
240. With the Day Nursery and other two locations, Stratus claimed to pay Negrete \$3,159, however, Stratus actually paid her much less after deductions.
241. After about 6 months working at the Day Nursery, a Stratus manager informed Negrete that she was no longer allowed to work at that location and demanded the keys. The Stratus manager said the client did not want her to clean any more. Stratus's quality audits from the last two months she worked at Day Nursery, however, reflect high ratings for her cleaning and include comments such as "Cleaning crew doing great job!" The quality audit is signed by a Stratus "operations person" and the customer.
242. Stratus assigned Negrete work at two other locations: Clear Choice and Primrose West Clay.
243. After 2 or 3 months working at Clear Choice, Stratus terminated Negrete from that location.

244. Stratus required Negrete to sign an “account acquisition agreement” prior to beginning work at Primrose West Clay. The agreement stated that Negrete owed Stratus a new account fee of \$1,753.50 and that Negrete would finance this amount through a “sweaty equity” of 6 monthly payments of \$292.25, which would be deducted from her pay. At no time did Stratus provide a Truth-in-Lending disclosure.
245. In June 2011, Stratus terminated Negrete from Primrose West Clay and Primrose Bridgewater.
246. On one occasion, Stratus deducted a fine of \$105 from her paycheck with no explanation.
247. On another occasion, Stratus deducted a fine of \$100 from her paycheck, telling her it was because she had used cleaning supplies that were not the Stratus brand.
248. The only cleaning work Negrete currently performs is at Primrose Noblesville. Stratus claims to pay her \$1,135 per month for this work, but after Stratus’s deduction, Stratus actually pays her \$908, far less than the \$3,000 per month Stratus promised.
249. Negrete has repeatedly asked Stratus for more work and to “complete her package” in order to provide the \$3,000 per month that Stratus represented it could provide when she signed the contract. Negrete has also requested a refund. Stratus has refused.

**L. ALLEGATIONS RELATING TO PLAINTIFF ALVAREZ AND LEON**

250. Or or about March 11, 2011, Plaintiff Alvarez and Leon paid Stratus a franchise fee of \$10,000 in cash for an “SBS-36 Franchise plan,” and, co-signing with business



partner Jose Leon, signed a franchise agreement. Defendant Wenger signed the franchise agreement as “regional director” of Stratus.

251. The document Alvarez and Leon signed, however, comprises only pages having the numbers 22, 27, 29 and 35, which appear to be the only pages that have blanks to be filled in when compared to Stratus’s sample contract provided to the Indiana Secretary of State.

252. Stratus represented it was capable of providing Alvarez and Leon with \$3,000 per month income under the “SBS-36 Franchise plan.”

253. Stratus never provided Alvarez and Leon with a Franchise Disclosure Document.

254. About a month later, Stratus assigned Alvarez and Leon her first cleaning job: North Grove Elementary School (“North Grove”), which was to pay \$3,650 per month. It was cleaned Monday through Friday and took Alvarez and Leon, her business partner and an assistant four hours each day.

255. Stratus required Alvarez and Leon to sign an “account acquisition agreement” prior to beginning work at North Grove. The agreement stated that Alvarez and Leon owed Stratus a new account fee of \$1,302 and that Alvarez and Leon would finance this amount through a “sweaty equity” of 6 monthly payments of \$217, which would be deducted from her monthly pay. At no time did Stratus provide a Truth-in-Lending disclosure.

256. Stratus also required Alvarez and Leon to purchase a North Grove “starter kit,” which would be paid through three monthly deductions of \$300 from their pay.

257. At the end of May 2011, Alvarez and Leon received her first check from Stratus, which was for work at North Grove during the month of April. After Stratus made

deductions for “royalty,” “administration fee,” “insurance,” the “account payment” of \$217, the “starter kit” payment of \$300 and other supplies that Stratus required, Stratus paid Alvarez and Leon only \$2,284.76 for the month’s work.

258. On August 11, 2011, Alvarez and Leon began cleaning North Grove at 6:00 pm and continued working until 3:00 am on August 12 in order to complete a list of cleaning items provided to her by Defendant Wenger. At 3:00 am, while Alvarez and Leon continued to work on the items Wenger listed, a different Stratus manager told her that her work had not been good enough, terminated her from the job and demanded that she return the keys.

259. Alvarez and Leon was not permitted to take the \$900 “starter kit” Stratus had required her to purchase with her. It was left at North Grove.

260. Defendant Wenger later sent a letter to Alvarez and Leon, attempting to explain the termination. The letter also stated that “you will have \$1,000.00 deducted from your July payment[,]” and “You will not receive any monies for the cleaning from 8/1/11 to 8/12/11 which totals \$1,425.”

261. When Alvarez received the final check for cleaning work at North Grove July 1 to August 12, 2011, Stratus only paid \$1,587.27 after Stratus’s deductions, the \$1,000 fine and another fine for “Items that were threw away at school.” Alvarez never received any explanation of what the “Items that were threw away at school” was.

262. Stratus has not offered Alvarez any cleaning work or income since August 2011 and has refused to refund her franchise fee or additional account fee.

**M. COUNT I – FRANCHISE FRAUD – ASSERTED BY ALL PLAINTIFFS AND THE CLASS AGAINST STRATUS, STRATUS FRANCHISING, SPELLACY, WENGER AND MARTINS**

263. Plaintiffs incorporate all allegations in the previous paragraphs as if fully set forth herein.
264. Stratus has employed a device, scheme or artifice to defraud, has made untrue statements of material fact and omitted material facts which were necessary under the circumstances, and has engaged in acts that operate as fraud or deceit upon the plaintiffs, in violation of the anti-fraud provision of the Indiana Franchise Act, I.C. § 23-2-2.5-27.
265. Stratus's most egregious act of franchise fraud involves the financial performance representations made to prospective franchisees. Throughout the process of soliciting prospective franchisees, Stratus represents, often in a chart format, that franchisees can expect to earn a certain amount of monthly or annual income, which is based upon the franchise fee paid.

<b>Basic Level Franchise Plans</b>							
Plan#	Customer Accounts		Full Cash		Down Pymt.	Remainder	
	Income(measured in gross annual billing)		Payment		(Cash pymt. At signing)	Financed @	Total
	Year	Month				15% per year	
SBS-6	\$6,000.00	\$500.00	\$2,700.00		\$1,000.00	\$2000.00(69.33/MONTH	\$3,000.00
SBS-9	\$9,000.00	\$750.00	\$4,160.00		\$3,200.00	\$2000.00(69.33/MONTH	\$5,200.00
SBS-12	\$12,000.00	\$1,000.00	\$4,800.00		\$4,000.00	\$2000.00(69.33/MONTH	\$6,000.00
SBS-18	\$18,000.00	\$1,500.00	\$6,560.00		\$5,000.00	\$3200(\$110.93/MONTH	\$8,200.00
SBS-24	\$24,000.00	\$2,000.00	\$8,000.00		\$8,000.00	\$4000(138.66/MONTH	\$10,000.00
SBS-30	\$30,000.00	\$2,500.00	\$9,600.00		\$7,000.00	\$5000(\$173.33/MONTH	\$12,000.00
<b>Management Level Franchise Plans</b>							
SBS-36	\$36,000.00	\$3,000.00	\$10,800.00		\$8,500.00	\$5000(\$173.33/MONTH	\$13,500.00
SBS-48	\$48,000.00	\$4,000.00	\$13,760.00		\$12,200.00	\$5000(\$173.33/MONTH	\$19,500.00
SBS-60	\$60,000.00	\$5,000.00	\$15,600.00		\$14,500.00	\$5000(\$173.33/MONTH	\$19,500.00
SBS-72	\$72,000.00	\$6,000.00	\$17,920.00		\$17,400.00	\$5000(\$173.33/MONTH	\$22,400.00

266. Stratus's franchise plan chart is a financial performance representation. The term "financial performance representations," is defined by 16 C.F.R. 436.1(e) as "any representation, including any oral, written, or visual representation, to a prospective franchisee, including a representation in the general media, that states, expressly or by implication, a specific level or range of actual or potential sales, income, gross profits, or net profits. The term includes a chart, table, or mathematical calculations that show possible results based on a combination of variables."

267. While Stratus makes the preceding financial performance representations, it wholly fails to provide prospective franchisees with any information that forms a

reasonable basis for these representations. This is an unfair or deceptive act under the Federal Trade Commission Act, 16 C.F.R. 436.9(c).

268. Moreover, these financial performance representations constitute a scheme or device to defraud because they are made to induce the prospective franchisee to pay the significant franchise fee in reliance on these representations.
269. Stratus's financial performance representations are also material untrue statements because Stratus misrepresents or omits its policies that make it impossible for franchisees to actually realize the income represented in the chart. For example, the chart does not disclose that the "income" level listed does not account for the huge deductions that Stratus takes out before giving any money to the franchisee.
270. Upon information and belief, no Stratus franchisee in Indiana has been able to reach the promised level of income over a sustained period of time.
271. Additional misrepresentations of material fact include the following:
  - a. Representing that Stratus was capable of providing a certain level of accounts that Stratus described as "guaranteed" to the plaintiffs when, in fact, Stratus did not have enough accounts to do so;
  - b. Representing that Stratus was capable of providing a certain level of accounts that Stratus described as "guaranteed" to the plaintiffs within four months of payment of the "down payment" of the franchise fee when, in fact, Stratus did not have enough accounts to do so;
  - c. Representing that Stratus had enough accounts to provide plaintiffs with accounts in an area of their choice when, in fact, Stratus did not have enough accounts to do so;

- d. Misrepresenting the start-up costs by omitting the cost of the “start up kit;”
- e. Representing that certain accounts were guaranteed to specific plaintiffs for a year;
- f. Intentionally misrepresenting to the Indiana Secretary of State that Stratus had not sold any franchises in Indiana prior to October 20, 2009, when in fact, Stratus had.

272. By promising “guaranteed accounts” and “cash flow protections” in their advertising, Stratus failed to accurately represent the risks that it expected franchisees to take on when they invested their hard earned savings to begin working with Stratus.

273. Stratus has omitted of material facts which were necessary in light of the circumstances by failing to provide plaintiffs with information required under the Indiana Franchise Act, information which would have allowed the plaintiffs to realistically evaluate entering into a relationship with Stratus. The material omissions include:

- a. Financial statements of Stratus, including as part of the FDD filed with the Indiana Secretary of State and provided to prospective franchisees;
- b. True and accurate lists of former and current Stratus franchisees, including as part of the FDD filed with the Indiana Secretary of State and provided to prospective franchisees;
- c. That franchisees were required to purchase starter kits and supplies directly from Stratus and at prices that exceed the fair market value;

- d. Disclosure that Stratus Franchising had been sued for violations of franchise laws and breach of franchise contracts
- e. Disclosure that Stratus had not complied with the franchise registration laws and that it had received deficiency notices from the Indiana Secretary of State
- f. Disclosure that Jerry Wenger, a Stratus principle listed in the FDD, was previously employed with Jan Pro, a cleaning franchise company that faced numerous lawsuits for breach of franchise laws and breach of franchise contracts.

274. Plaintiffs and the Class suffered damages as a result of Stratus's fraud and violations of the Indiana Franchise Act in an amount to be determined at trial and to interest at the rate of 8% on the judgment.

275. Pursuant the Indiana Franchise Act, Plaintiffs and the Class are entitled to reasonable attorneys fees for Stratus' violation of the Indiana Franchise Act.

276. Defendants Stratus Franchising, Spellacy, Wenger and Martins have materially aided and abetted acts and transactions of Stratus that violate the Indiana Franchise Act.

277. Specifically, Stratus Franchising and Spellacy participated in preparing the franchise registrations and disclosure documents that Stratus filed with the Indiana Secretary of State and provided to at least some members of the class.

278. In addition, Spellacy represented to the Indiana Secretary of State in connection with the filings of Stratus, including the above statement from October, 2009 that it

had not previously sold or offered to sell franchises with full knowledge that Stratus had offered and sold franchises in Indiana before that date.

279. Defendants Wenger and Martins personally have offered illegal franchises for sale, have signed illegal franchise contracts, and have knowingly and materially participated in Stratus's scheme to mislead and defraud.

280. Pursuant I.C. 23-2-2.5-29, Defendants Stratus Franchising, Spellacy, Wenger and Martins are jointly and severally liable for the franchise fraud and violations of the Indiana Franchise Act committed by Stratus.

281. Plaintiffs and the Class are entitled to recover consequential damages they have suffered as a result of Defendants' violations of I.C.23-2-2.5-27, including but not limited to a refund of their "franchise fees" and "additional account fees" with interest, attorney's fees and costs.

**N. COUNT II – INDIANA CRIME VICTIM'S RECOVERY (I.C. 34-24-3) -- ASSERTED BY PLAINTIFFS AND THE CLASS AGAINST STRATUS, STRATUS FRANCHISING, SPELLACY AND MARTINS**

282. Plaintiffs incorporate all allegations in the previous paragraphs as if fully set forth herein.

283. Stratus, Stratus Franchising, Spellacy, and Martins have disseminated to the public, the Plaintiffs and the Class advertisements, in the form of radio and print ads and internet advertisements and web pages, that Stratus, Stratus Franchising Spellacy, and Martins know to be false, misleading or deceptive with the intent to promote the purchase of property and/or acceptance of employment, namely with the intent to



induce Plaintiffs and others to purchase a “franchise” and / or become employed by Stratus, in violation of I.C. 35-43-5-3(9) (Deception).

284. Said advertisements fail to reveal material facts in light of the representations of the advertisements, including the following:

- a. That Stratus was did not have sufficient customers or accounts to provide the “guaranteed” level of customers / accounts to Plaintiffs;
- b. That the levels of “guaranteed income” available to Plaintiffs did not take into account huge deductions that Stratus intended to take;
- c. That Stratus engaged in the practice of “churning” as described herein;
- d. That the track record of Stratus and other master franchises of Stratus Franchising was that they had consistently failed to provide the level of customers / accounts to earlier sub-franchisees; and
- e. That the offer and sale of Stratus franchises violate the Indiana Franchise Act and other laws.

285. Plaintiffs and the Class have suffered pecuniary loss by virtue of Defendants’ Deception.

286. Pursuant to the Indiana Crime Victims Statute, I.C. 34-24-3, Plaintiffs and the Class are entitled to recover actual, compensatory and treble damages, attorney’s fees and costs.

**O. COUNT III – VIOLATION OF INDIANA DECEPTIVE CONSUMER SALES STATUTE (I.C. 24-5-0.5), ASSERTED BY PLAINTIFFS AND AND THE CLASS AGAINST STRATUS**

287. The franchises sold by Stratus to Plaintiffs and the Class are either an item of personal property or intangible property.
288. Plaintiffs and the Class purchased franchises from Stratus for primarily personal, familial, or household purposes, namely to help themselves and their family members increase their personal, familial or household income.
289. Stratus committed the following deceptive acts in the aforementioned consumer transactions:
- a. Stratus represented that the franchises sold to Plaintiffs and the Class as being legal or approved franchises in the State of Indiana, when in fact, they were illegal and unapproved franchises because Stratus had not complied with the requirements of the Indiana Franchise Act. (I.C. 24-5-0.5-3(a)(1)).
  - b. In selling the franchises to Plaintiffs and the Class, Stratus was unable to deliver or complete the subject of the franchises, namely, providing the amount of guaranteed accounts within the stated period of time, and Stratus knew or should have reasonably know it could not do so at the time. (I.C. 24-5-0.5-3(a)(10)).
  - c. Stratus's sales of unlawful franchises to Plaintiffs and the Class violate I.C. 24-5-0.5-3(a)(31) (concerning deceptive commercial solicitations).

290. Plaintiffs and the Class relied upon Stratus's uncured and incurable deceptive acts.

291. Stratus has willfully committed the aforementioned deceptive acts.

292. Pursuant to the I.C. 24-5-0.5-4, Plaintiffs and the Class are entitled to recover actual and treble damages, attorney fees and costs.

**P. COUNT IV – VIOLATION OF INDIANA WAGE PAYMENT STATUTE -- ASSERTED BY PLAINTIFFS MARTINEZ, MANRIQUEZ, DE LA CRUZ, CRUZ RODRIGUEZ, GARCIA, ANDOLON, RODRIGUEZ, NEGRETE, ALVAREZ, LEON AND THE CLEANING WORKER SUB-CLASS AGAINST STRATUS AND SPELLACY**

293. Plaintiffs incorporate all allegations in the previous paragraphs as if fully set forth herein.

294. Under Indiana law, Plaintiffs Martinez, Manriquez, De La Cruz, Cruz Rodriguez, Garcia, Andolon, Rodriguez, Negrete, Alvarez, Leon and Cleaning Worker Sub-Class ("Cleaning Worker Plaintiffs") are or were employees of Stratus and Spellacy.

295. Stratus and Spellacy have failed to pay the Cleaning Worker Plaintiffs' wages in the manner provided by the Indiana Wage Payment Statute, I.C. 22-2-5-1, namely, "at least semimonthly or biweekly."

296. Stratus and Spellacy paid the Cleaning Worker Plaintiffs' wages on the last day of the month that proceeded the month when wages were earned. For example, wages for April 2012 would be paid on the last day of May 2012.

297. IC 22-2-5-2 states that persons that violate IC 22-2-5-1 "shall, as liquidated damages for such failure, pay to such employee for each day that the amount due to him remains unpaid ten percent (10%) of the amount due to him in addition thereto,

not exceeding double the amount of wages due, and said damages may be recovered in any court having jurisdiction of a suit to recover the amount due to such employee, and in any suit so brought to recover said wages or the liquidated damages for nonpayment thereof, or both, the court shall tax and assess as costs in said case a reasonable fee for the plaintiff's attorney or attorneys.”

298. The Cleaning Worker Plaintiffs are entitled to interest, liquidated damages, costs and reasonable attorney fees for said violations.

**Q. COUNT V – VIOLATION OF INDIANA WAGE DEDUCTIONS STATUTE-- ASSERTED BY MARTINEZ, MANRIQUEZ, DE LA CRUZ, CRUZ RODRIGUEZ, GARCIA, ANDOLON, RODRIGUEZ, NEGRETE, ALVAREZ, LEON AND THE CLEANING WORKER SUB-CLASS AGAINST STRATUS AND SPELLACY**

299. Plaintiffs incorporate all allegations in the previous paragraphs as if fully set forth herein.

300. Under Indiana law, Martinez, Manriquez, De La Cruz, Cruz Rodriguez, Garcia, Andolon, Rodriguez, Negrete, Alvarez, Leon and Cleaning Worker Sub-Class (“Cleaning Worker Plaintiffs”) are or were employees of Stratus and Spellacy.

301. Stratus and Spellacy have failed to the Cleaning Worker Plaintiffs all wages due to them by making improper deductions from their pay, in violation of the Indiana Wage Deductions Statute, I.C. 22-2-6.

302. Moreover, Stratus and Spellacy have assessed fines against the Cleaning Worker Plaintiffs’ wages, in violation of I.C. 22-2-8, by charging the Plaintiffs a fifty dollar (\$50) fee for each alleged customer complaint.

303. The Cleaning Worker Plaintiffs are entitled to unpaid wages, liquidated damages, costs and reasonable attorneys’ fees for said violations.

**R. COUNT V – TRUTH-IN-LENDING -- MARTINEZ, MANRIQUEZ, DE LA CRUZ, CRUZ RODRIGUEZ, FUNES, ESCOBEDO, NEGRETE, ALVAREZ, LEON AND BORROWER SUB-CLASS AGAINST STRATUS**

304. Plaintiffs incorporate all allegations in the previous paragraphs as if fully set forth herein.

305. Plaintiffs Martinez, Manriquez, De La Cruz, Cruz Rodriguez, Funes, Escobedo, Negrete, and Alvarez (the “Borrower Plaintiffs”) and each member of the Borrower Sub-Class obtained credit from Stratus to pay “franchise fees,” “additional account fees,” or “starter kits,” which fees were incurred to allow them to obtain further income for their personal, family and household purposes.

306. A representative disclosure of financing terms provided by Stratus was that for Cruz Rodriguez, for whom Stratus financed over \$19,000 for the “Dellon Automotive” Account. The disclosure was:

\$ <u>5750.00</u>	- \$ <u>200.00</u>	= \$ <u>5550.00</u>	x <u>51413</u>	= \$ <u>286,191.50</u>
Additional Billing Provided	- Business Owed	= Billing Volume Difference	x Multiplier	= Total \$ Amount Due.

**PAYMENT OPTIONS**

1. PAYMENT IN FULL - \$ 117,232.75 has been paid in complete payment of the Account Acquisition Fee (less 10% for cash payment). No interest assessed.

2. SWEAT EQUITY OPTION - \$ 3191.75 is to be deducted in 4 or 5 consecutive, equal installments from the Franchisee monthly statement until complete payment of the Account Acquisition Fee has been achieved. No interest will be assessed. Payment amounts applied to this note, equals the amount of money left after Royalties, Management Fee's, Insurance and any other fees that may apply, are deducted.

3. LOAN OPTION - The balance of the amount due from above (\$ 728.00) will be paid in 24 equal monthly installments based upon the gross monthly billing volume difference of the account, with interest on the balance at 15% per annum.

307. Stratus was obligated to provide but did not provide a Truth-in-Lending disclosure statement for any of the financings of either franchise fees, additional account fees, or other financings, such as for “startup kits.”

308. Stratus violated the requirements of Truth-in-Lending ACT and Regulation Z, by failing to provide disclosures for financings it made that included at least the following:

- The identity of the Creditor making the disclosures
- The annual percentage rate
- The Finance Charge
- The Total of Payments
- The Total Sales Price
- The Total of Payments
- A contract reference in compliance with 12 CFR 226.18(p)

309. By reason of Stratus's aforementioned violations of the Truth-in-Lending Act and Regulation Z, Stratus is liable to the Borrower Plaintiffs in the amount of twice the finance charges, \$1,000 in liquidated damages for each violation, actual damages in an amount to be determined at trial, and attorney fees and costs in accordance with 15 U.S.C. § 1640.

**S. PRAYER FOR CLASS CERTIFICATION**

310. Plaintiffs incorporate all allegations in the previous paragraphs as if fully set forth herein.

311. Plaintiffs bring this action as a class action. .

312. Each Class and Sub-Class is so numerous that joinder of all parties is impracticable.

313. There are significant questions of law and fact that are common to the Class and Sub-Classes.
314. The Claims of the representative parties are typical of the Class and Sub-Class members.
315. The representative parties will fairly and adequately protect the interests of the Class and Sub-Classes.
316. Stratus, Stratus Franchising, Spellacy, Wenger and Martins have acted and refused to act upon grounds that are generally applicable to the Class and Sub-Classes, making it appropriate for the Court to render final relief with respect to the Class and Sub-Classes as a whole.
317. Unless a class action is maintained, there is a risk of inconsistent adjudications and adjudications with respect to one Class and Sub-Class member could substantially impair or impeded the ability of other class members to protect their interests.
318. The undersigned counsel are able to adequately represent the Class and Sub-Classes.
319. The Plaintiffs pray for an order of the Court maintaining this action as a class action.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, respectfully request this Court to:

- (a) enter an order maintaining this action as a class action;

- (b) award Plaintiffs and members of the Class and Sub-Classes actual damages for losses incurred in an amount to be determined at trial;
- (c) award Plaintiffs and members of the Class and Sub-Classes incidental, consequential, treble damages and interest;
- (d) award Plaintiffs and members of the Class and Sub-Classes attorney's fees and costs of this action.

Respectfully submitted,

By:  \_\_\_\_\_

Paul B. Overhauser,  
Attorney No. 10275-98  
Kathrine Jack, of counsel  
Attorney No. 26851-49

**OVERHAUSER LAW OFFICES,  
LLC**

740 W. Green Meadows Dr., Suite 300  
Greenfield, IN 46140-4019

P: 317-891-1500

F: 866-283-8549

[poverhauser@overhauser.com](mailto:poverhauser@overhauser.com)