

**IN THE SUPERIOR COURT OF HALL COUNTY**

**STATE OF GEORGIA**

GASPARE BADALAMENTE, RON BROCK,  
BOB CHRISTMAS, HUNTER FLEMING,  
REX GRANT, NEPTUNE HOLDINGS, LLC,  
RICK HAMILTON, MATT HANDTE,  
JAY HOLLANDER, ARDEN HOTHEM,  
FRANK LAKE, ROBERT MONROE,  
THOMAS SHOLES, JUDD WILLIAMS,  
DONALD R. WILLERS, ALLAN B. COOK,  
and MICHAEL GOTTSMAN,

Plaintiffs,

vs.

WENDELL SPELL, NORTH GEORGIA  
EQUIPMENT SALES, LLC, SAM SHAW,  
DEBORAH ALMAND,  
and GREGORY ROWLAND,

Defendants.

CIVIL ACTION FILE

NO. 2009CV703A

**ANSWER OF MR. SAM SHAW, MRS. DEBRA ALMAND,  
AND MR. GREGORY ROWLAND**

COME NOW the Defendants in the above styled matter, Mr. Sam Shaw, Mrs. Debra Almand and Mr. Gregory Rowland, by and through their undersigned counsel, and hereby file this their Answer to the averments and allegations contained in the Complaint of the Plaintiffs, with regard only to these Defendants, and further show this Honorable Court as follows:

1.

With regard to the allegations contained in Paragraph One of the Plaintiffs' Complaint, to wit: that Defendant Wendell Spell is a resident in Hall County, Georgia and may be served at 539

Cleveland Highway, Clermont, GA 30527, the Defendants jointly respond and answer that they are completely unaware of the present whereabouts of Defendant Wendell Spell (hereinafter referred to as “Spell”) and are therefore unable to admit or deny whether Spell is a Hall County, Georgia resident as of the filing of this Answer. The Defendants further state that they are unable to confirm whether the residence address stated is a valid address for Spell. For purposes of these defensive pleadings, the Defendants respond that they have insufficient information available to respond to these averments and can neither admit nor deny the allegations contained therein; therefore, the same shall stand denied at this time.

2.

With regard to the allegations contained in Paragraph Two of the Plaintiffs’ Complaint, to wit: that Defendant North Georgia Equipment Sales, LLC (hereinafter sometimes referred to as “North GA” or “Defendant Corporation”) is a Georgia Limited Liability Company whose registered agent, Pamela R. Spell, may be served at the same address, the Defendants jointly respond and answer that, for the purposes of these defensive pleadings, they have insufficient information to either admit or deny the allegations contained therein. Defendants Shaw, Almand, and Rowland are not officers of the Defendant Corporation; neither are they members, managers or shareholders of the Defendant Corporation. Therefore, these allegations shall stand denied at this time.

3.

The Defendants admit the averments contained in Paragraph Three of the Plaintiffs’ Complaint, to wit: that Defendant Sam Shaw is a resident of the stated address in Clermont, Hall County, Georgia and is subject to the jurisdiction, venue and process of this Honorable Court. In further Answer, the Defendants show that Mr. Sam Shaw was formerly an employee of

Defendant North GA, serving in many capacities during his tenure.

4.

The Defendants admit the averments contained in Paragraph Four of the Plaintiffs' Complaint, to wit: that Defendant Deborah Almand is a resident of the stated address in Clermont, Hall County, Georgia and is subject to the jurisdiction, venue and process of this Honorable Court. The Defendants further show that the correct spelling of Mrs. Almand's name is "Debra," not "Deborah." In further Answer, the Defendants show that Mrs. Debra Almand was formerly an employee of Defendant North GA, serving as an administrative assistant.

5.

The Defendants admit the averments contained in Paragraph Five of the Plaintiffs' Complaint, to wit: that Defendant Gregory Rowland is a resident of the stated address in Gainesville, Hall County, Georgia and is subject to the jurisdiction, venue and process of this Honorable Court. In further Answer, the Defendants show that Mr. Gregory Rowland was an employee of Defendant North GA, serving as a salesman.

6.

With regard to the allegations contained in Paragraph Six of the Plaintiffs' Complaint, to wit: that the several named defendants jointly engaged in a conspiracy to defraud and steal money from the Plaintiffs in a "ponzi" scheme, the Defendants jointly respond and answer that, while it appears from the pleadings of this and other civil actions filed for record in Hall County Superior Court that Spell has engaged in such fraudulent activities against the Plaintiffs and others, Defendants Shaw, Almand, and Rowland have never engaged in any such activities with respect to the Plaintiffs or any other persons whatsoever, neither jointly nor severally. Therefore, the allegations shall stand denied. Neither did any of the Defendants have knowledge of Spell's

purported activities at any time while being employed by Defendant North GA or at any other time prior to being informed of such activities by an individual who identified himself as a defrauded investor in mid-October 2008. The Defendants adamantly and completely deny any and all allegations of knowledge of or participation in said “ponzi” scheme. In further Answer, the Defendants show that they were employed by Defendant North GA to buy and sell new heavy equipment, broker sales of used equipment, handle rental agreements for on-site equipment, and offer maintenance and repair of such equipment. At all times germane to this matter, the Defendants believed that they were employed by a legitimate business organization and had no connection whatsoever to the purported “investment” business as alleged in the Complaint.

**DENIAL OF COUNT ONE – THEFT BY TAKING**

7.

Paragraph Seven of the Plaintiffs’ Complaint contains mere recitations which require no response, be it an admission or denial.

8.

With regard to the allegations contained in Paragraph Eight of the Plaintiffs’ Complaint, to wit: that the Defendants committed theft by taking, the Defendants jointly respond and answer that said allegations with respect to Defendants Shaw, Almand, and Rowland are completely false. Therefore, the allegations shall stand adamantly and completely denied.

9.

With regard to the allegations contained in Paragraph Nine of the Plaintiffs’ Complaint, to wit: that the Plaintiffs suffered actual damages as a result of the Defendants thefts, the Defendants jointly respond and answer that said allegations with respect to Defendants Shaw, Almand, and Rowland are completely false. Although the Defendants believe that the Plaintiffs

have been harmed as a result of Spell's conduct, these Defendants have not participated in said conduct in any way. Therefore, the allegations shall stand adamantly and completely denied.

10.

With regard to the allegations contained in Paragraph Ten of the Plaintiffs' Complaint, to wit: that the Plaintiffs actual damages were proximately caused by the Defendants thefts, the Defendants jointly respond and answer that said allegations with respect to Defendants Shaw, Almand, and Rowland are completely false. Although the Defendants believe that the Plaintiffs injuries may have been proximately caused by Spell, these Defendants have not participated in said damages in any way. Therefore, the allegations shall stand adamantly and completely denied.

11.

With regard to the allegations contained in Paragraph Eleven of the Plaintiffs' Complaint, to wit: that the Plaintiffs' damages are continuing and are entitled to recover damages from the Defendants, the Defendants jointly respond and answer that said allegations with respect to Defendants Shaw, Almand, and Rowland are completely false. Although the Defendants believe that the Plaintiffs may be entitled to recover damages from Spell, these Defendants are not liable to the Plaintiffs for damages in any amount. Therefore, the allegations shall stand adamantly and completely denied.

12.

With regard to the allegations contained in Paragraph Twelve of the Plaintiffs' Complaint, to wit: that the Defendants have exhibited malicious indifference to the consequences to the Plaintiffs of Spell's conduct, the Defendants jointly respond and answer that said allegations with respect to Defendants Shaw, Almand, and Rowland are completely false.

Although the Defendants believe that the Plaintiffs injuries may have been the result of a conscious indifference by Spell, these Defendants have not participated in said conduct in any way. Therefore, the allegations shall stand adamantly and completely denied.

13.

The Defendants are unable to respond to the allegations contained in Paragraph Thirteen of the Plaintiffs' Complaint because the Defendants have insufficient information regarding the Plaintiffs' injuries and therefore the allegations shall stand denied at this time. In further Answer, the Defendants show that any injuries suffered by the Plaintiffs are the result of conduct by Spell and not by any of these Defendants.

14.

The Defendants are unable to respond to the allegations contained in Paragraph Fourteen of the Plaintiffs' Complaint because the Defendants have insufficient information regarding the nature of the Plaintiffs' injuries and whether injunctive relief is an appropriate interlocutory remedy; however, upon information and belief, the Plaintiffs' losses have already been fully realized by the Plaintiffs. There is no injunction that this Court can impose as of this writing with respect to these Defendants that is ripe for consideration or that has been properly shown by the pleadings. In further Answer, the Defendants show that they have no assets in their possession or under their control which are even arguably the subject of this dispute or which may have given rise to the filing of this Complaint. Therefore, the allegations shall stand adamantly and completely denied. The Defendants hereby object to the motion for injunctive relief and urge the Court to move this matter ahead of all other matters on the docket and schedule a hearing on said motion within thirty (30) days.

**DENIAL OF COUNT TWO – THEFT BY DECEPTION**

15.

Paragraph Fifteen of the Plaintiffs' Complaint contains mere recitations which require no response, be it an admission or denial.

16.

With regard to the allegations contained in Paragraph Sixteen of the Plaintiffs' Complaint, to wit: that the Defendants committed theft by deception, the Defendants jointly respond and answer that said allegations with respect to Defendants Shaw, Almand, and Rowland are completely false. Therefore, the allegations shall stand adamantly and completely denied.

17.

With regard to the allegations contained in Paragraph Seventeen of the Plaintiffs' Complaint, to wit: that the Plaintiffs suffered actual damages as a result of the Defendants thefts, the Defendants jointly respond and answer that said allegations with respect to Defendants Shaw, Almand, and Rowland are completely false. Although the Defendants believe that the Plaintiffs have been harmed as a result of Spell's conduct, these Defendants have not participated in said conduct in any way. Therefore, the allegations shall stand adamantly and completely denied.

18.

With regard to the allegations contained in Paragraph Eighteen of the Plaintiffs' Complaint, to wit: that the Plaintiffs actual damages were proximately caused by the Defendants thefts, the Defendants jointly respond and answer that said allegations with respect to Defendants Shaw, Almand, and Rowland are completely false. Although the Defendants believe that the Plaintiffs injuries may have been proximately caused by Spell, these Defendants have not

participated in said damages in any way. Therefore, the allegations shall stand adamantly and completely denied.

19.

With regard to the allegations contained in Paragraph Nineteen of the Plaintiffs' Complaint, to wit: that the Plaintiffs' damages are continuing and are entitled to recover damages from the Defendants, the Defendants jointly respond and answer that said allegations with respect to Defendants Shaw, Almand, and Rowland are completely false. Although the Defendants believe that the Plaintiffs may be entitled to recover damages from Spell, these Defendants are not liable to the Plaintiffs for damages in any amount. Therefore, the allegations shall stand adamantly and completely denied.

20.

With regard to the allegations contained in Paragraph Twenty of the Plaintiffs' Complaint, to wit: that the Defendants have exhibited malicious indifference to the consequences to the Plaintiffs of Spell's conduct, the Defendants jointly respond and answer that said allegations with respect to Defendants Shaw, Almand, and Rowland are completely false. Although the Defendants believe that the Plaintiffs injuries may have been the result of a conscious indifference by Spell, these Defendants have not participated in said conduct in any way. Therefore, the allegations shall stand adamantly and completely denied.

21.

The Defendants are unable to respond to the allegations contained in Paragraph Twenty One of the Plaintiffs' Complaint because the Defendants have insufficient information regarding the Plaintiffs' injuries and therefore the allegations shall stand denied at this time. In further Answer, the Defendants show that any injuries suffered by the Plaintiffs are the result of conduct

by Spell and not by any of these Defendants.

22.

The Defendants are unable to respond to the allegations contained in Paragraph Twenty Two of the Plaintiffs' Complaint because the Defendants have insufficient information regarding the nature of the Plaintiffs' injuries and whether injunctive relief is an appropriate interlocutory remedy; however, upon information and belief, the Plaintiffs' losses have already been fully realized by the Plaintiffs. There is no injunction that this Court can impose as of this writing with respect to these Defendants that is ripe for consideration or that has been properly shown by the pleadings. In further Answer, the Defendants show that they have no assets in their possession or under their control which are even arguably the subject of this dispute or which may have given rise to the filing of this Complaint. Therefore, the allegations shall stand adamantly and completely denied. The Defendants hereby object to the motion for injunctive relief and urge the Court to move this matter ahead of all other matters on the docket and schedule a hearing on said motion within thirty (30) days.

**DENIAL OF COUNT THREE – THEFT BY CONVERSION**

23.

Paragraph Twenty Three of the Plaintiffs' Complaint contains mere recitations which require no response, be it an admission or denial.

24.

With regard to the allegations contained in Paragraph Twenty Four of the Plaintiffs' Complaint, to wit: that the Defendants committed theft by conversion, the Defendants jointly respond and answer that said allegations with respect to Defendants Shaw, Almand, and Rowland are completely false. Therefore, the allegations shall stand adamantly and completely

denied.

25.

With regard to the allegations contained in Paragraph Twenty Five of the Plaintiffs' Complaint, to wit: that the Plaintiffs suffered actual damages as a result of the Defendants thefts, the Defendants jointly respond and answer that said allegations with respect to Defendants Shaw, Almand, and Rowland are completely false. Although the Defendants believe that the Plaintiffs have been harmed as a result of Spell's conduct, these Defendants have not participated in said conduct in any way. Therefore, the allegations shall stand adamantly and completely denied.

26.

With regard to the allegations contained in Paragraph Twenty Six of the Plaintiffs' Complaint, to wit: that the Plaintiffs actual damages were proximately caused by the Defendants thefts, the Defendants jointly respond and answer that said allegations with respect to Defendants Shaw, Almand, and Rowland are completely false. Although the Defendants believe that the Plaintiffs injuries may have been proximately caused by Spell, these Defendants have not participated in said damages in any way. Therefore, the allegations shall stand adamantly and completely denied.

27.

With regard to the allegations contained in Paragraph Twenty Seven of the Plaintiffs' Complaint, to wit: that the Plaintiffs' damages are continuing and are entitled to recover damages from the Defendants, the Defendants jointly respond and answer that said allegations with respect to Defendants Shaw, Almand, and Rowland are completely false. Although the Defendants believe that the Plaintiffs may be entitled to recover damages from Spell, these Defendants are not liable to the Plaintiffs for damages in any amount. Therefore, the allegations shall stand

adamantly and completely denied.

28.

With regard to the allegations contained in Paragraph Twenty Eight of the Plaintiffs' Complaint, to wit: that the Defendants have exhibited malicious indifference to the consequences to the Plaintiffs of Spell's conduct, the Defendants jointly respond and answer that said allegations with respect to Defendants Shaw, Almand, and Rowland are completely false. Although the Defendants believe that the Plaintiffs injuries may have been the result of a conscious indifference by Spell, these Defendants have not participated in said conduct in any way. Therefore, the allegations shall stand adamantly and completely denied.

29.

The Defendants are unable to respond to the allegations contained in Paragraph Twenty Nine of the Plaintiffs' Complaint because the Defendants have insufficient information regarding the Plaintiffs' injuries and therefore the allegations shall stand denied at this time. In further Answer, the Defendants show that any injuries suffered by the Plaintiffs are the result of conduct by Spell and not by any of these Defendants.

30.

The Defendants are unable to respond to the allegations contained in Paragraph Thirty of the Plaintiffs' Complaint because the Defendants have insufficient information regarding the nature of the Plaintiffs' injuries and whether injunctive relief is an appropriate interlocutory remedy; however, upon information and belief, the Plaintiffs' losses have already been fully realized by the Plaintiffs. There is no injunction that this Court can impose as of this writing with respect to these Defendants that is ripe for consideration or that has been properly shown by the pleadings. In further Answer, the Defendants show that they have no assets in their

possession or under their control which are even arguably the subject of this dispute or which may have given rise to the filing of this Complaint. Therefore, the allegations shall stand adamantly and completely denied. The Defendants hereby object to the motion for injunctive relief and urge the Court to move this matter ahead of all other matters on the docket and schedule a hearing on said motion within thirty (30) days.

**DENIAL OF COUNT FOUR – FRAUD AND DECEIT**

31.

Paragraph Thirty One of the Plaintiffs' Complaint contains mere recitations which require no response, be it an admission or denial.

32.

With regard to the allegations contained in Paragraph Thirty Two of the Plaintiffs' Complaint, to wit: that the Defendants committed fraud by deceit, the Defendants jointly respond and answer that said allegations with respect to Defendants Shaw, Almand, and Rowland are completely false. Therefore, the allegations shall stand adamantly and completely denied.

33.

With regard to the allegations contained in Paragraph Thirty Three of the Plaintiffs' Complaint, to wit: that the Plaintiffs suffered actual damages as a result of the Defendants fraud, the Defendants jointly respond and answer that said allegations with respect to Defendants Shaw, Almand, and Rowland are completely false. Although the Defendants believe that the Plaintiffs have been harmed as a result of Spell's conduct, these Defendants have not participated in said conduct in any way. Therefore, the allegations shall stand adamantly and completely denied.

34.

With regard to the allegations contained in Paragraph Thirty Four of the Plaintiffs'

Complaint, to wit: that the Plaintiffs actual damages were proximately caused by the Defendants fraud, the Defendants jointly respond and answer that said allegations with respect to Defendants Shaw, Almand, and Rowland are completely false. Although the Defendants believe that the Plaintiffs injuries may have been proximately caused by Spell, these Defendants have not participated in said damages in any way. Therefore, the allegations shall stand adamantly and completely denied.

35.

With regard to the allegations contained in Paragraph Thirty Five of the Plaintiffs' Complaint, to wit: that the Plaintiffs' damages are continuing and are entitled to recover damages from the Defendants, the Defendants jointly respond and answer that said allegations with respect to Defendants Shaw, Almand, and Rowland are completely false. Although the Defendants believe that the Plaintiffs may be entitled to recover damages from Spell, these Defendants are not liable to the Plaintiffs for damages in any amount. Therefore, the allegations shall stand adamantly and completely denied.

36.

With regard to the allegations contained in Paragraph Thirty Six of the Plaintiffs' Complaint, to wit: that the Defendants have exhibited malicious indifference to the consequences to the Plaintiffs of Spell's conduct, the Defendants jointly respond and answer that said allegations with respect to Defendants Shaw, Almand, and Rowland are completely false. Although the Defendants believe that the Plaintiffs injuries may have been the result of a conscious indifference by Spell, these Defendants have not participated in said conduct in any way. Therefore, the allegations shall stand adamantly and completely denied.

37.

The Defendants are unable to respond to the allegations contained in Paragraph Thirty Seven of the Plaintiffs' Complaint because the Defendants have insufficient information regarding the Plaintiffs' injuries and therefore the allegations shall stand denied at this time. In further Answer, the Defendants show that any injuries suffered by the Plaintiffs are the result of conduct by Spell and not by any of these Defendants.

38.

The Defendants are unable to respond to the allegations contained in Paragraph Thirty Eight of the Plaintiffs' Complaint because the Defendants have insufficient information regarding the nature of the Plaintiffs' injuries and whether injunctive relief is an appropriate interlocutory remedy; however, upon information and belief, the Plaintiffs' losses have already been fully realized by the Plaintiffs. There is no injunction that this Court can impose as of this writing with respect to these Defendants that is ripe for consideration or that has been properly shown by the pleadings. In further Answer, the Defendants show that they have no assets in their possession or under their control which are even arguably the subject of this dispute or which may have given rise to the filing of this Complaint. Therefore, the allegations shall stand adamantly and completely denied. The Defendants hereby object to the motion for injunctive relief and urge the Court to move this matter ahead of all other matters on the docket and schedule a hearing on said motion within thirty (30) days.

**DENIAL OF COUNT FIVE – VIOLATION OF RICO ACT**

39.

Paragraph Thirty Nine of the Plaintiffs' Complaint contains mere recitations which require no response, be it an admission or denial.

40.

With respect to the allegations contained in Paragraph Forty of the Plaintiffs' Complaint, to wit: that the Defendants' actions of theft in various forms constitute racketeering under subparagraph (b), the Defendants respond and answer that said allegations with respect to Defendants Shaw, Almand, and Rowland are completely false. Therefore, the allegations shall stand adamantly and completely denied.

41.

With respect to the allegations contained in Paragraph Forty One of the Plaintiffs' Complaint, to wit: that the Defendants have engaged in at least two racketeering incidents, the Defendants respond and answer that said allegations with respect to Defendants Shaw, Almand, and Rowland are completely false. Therefore, the allegations shall stand adamantly and completely denied.

42.

With respect to the allegations contained in Paragraph Forty Two of the Plaintiffs' Complaint, to wit: that the Defendants have acquired or maintained an interest control of the Plaintiffs personal property, the Defendants respond and answer that said allegations with respect to Defendants Shaw, Almand, and Rowland are completely false. Therefore, the allegations shall stand adamantly and completely denied.

43.

With regard to the allegations contained in Paragraph Fourty Three of the Plaintiffs' Complaint, to wit: that the Plaintiffs have been injured as a result of the Defendants racketeering, the Defendants jointly respond and answer that said allegations with respect to Defendants Shaw, Almand, and Rowland are completely false. Although the Defendants believe that the Plaintiffs

have been harmed as a result of Spell's conduct, these Defendants have not participated in said conduct in any way. Therefore, the allegations shall stand adamantly and completely denied.

44.

The Defendants are unable to respond to the allegations contained in Paragraph Forty Four of the Plaintiffs' Complaint because the Defendants have insufficient information regarding the nature of the Plaintiffs' injuries and whether they are entitled to civil remedies as alleged. Without such information, the Defendants can neither admit nor deny the averments. Therefore, the allegations shall stand denied at this time.

45.

The Defendants are unable to respond to the allegations contained in Paragraph Forty Five of the Plaintiffs' Complaint because the Defendants have insufficient information regarding the Plaintiffs' injuries and therefore the allegations shall stand denied at this time. In further Answer, the Defendants show that any injuries suffered by the Plaintiffs are the result of conduct by Spell and not by any of these Defendants.

46.

The Defendants are unable to respond to the allegations contained in Paragraph Forty Six of the Plaintiffs' Complaint because the Defendants have insufficient information regarding the nature of the Plaintiffs' injuries and whether injunctive relief is an appropriate interlocutory remedy; however, upon information and belief, the Plaintiffs' losses have already been fully realized by the Plaintiffs. There is no injunction that this Court can impose as of this writing with respect to these Defendants that is ripe for consideration or that has been properly shown by the pleadings. In further Answer, the Defendants show that they have no assets in their possession or under their control which are even arguably the subject of this dispute or which

may have given rise to the filing of this Complaint. Therefore, the allegations shall stand adamantly and completely denied. The Defendants hereby object to the motion for injunctive relief and urge the Court to move this matter ahead of all other matters on the docket and schedule a hearing on said motion within thirty (30) days.

**DENIAL OF COUNT SIX – VIOLATION OF RICO ACT**

47.

Paragraph Forty Seven of the Plaintiffs' Complaint contains mere recitations which require no response, be it an admission or denial.

48.

With respect to the allegations contained in Paragraph Forty Eight of the Plaintiffs' Complaint, to wit: that the Defendants' actions of theft in various forms constitute racketeering under subparagraph (c), the Defendants respond and answer that said allegations with respect to Defendants Shaw, Almand, and Rowland are completely false. Therefore, the allegations shall stand adamantly and completely denied.

49.

With respect to the allegations contained in Paragraph Forty Nine of the Plaintiffs' Complaint, to wit: that the Defendants have engaged in at least two racketeering incidents, the Defendants respond and answer that said allegations with respect to Defendants Shaw, Almand, and Rowland are completely false. Therefore, the allegations shall stand adamantly and completely denied.

50.

With respect to the allegations contained in Paragraph Fifty of the Plaintiffs' Complaint, to wit: that the Defendants have participated in a racketeering enterprise either directly or

indirectly, the Defendants respond and answer that said allegations with respect to Defendants Shaw, Almand, and Rowland are completely false. Therefore, the allegations shall stand adamantly and completely denied.

51.

With regard to the allegations contained in Paragraph Fifty One of the Plaintiffs' Complaint, to wit: that the Plaintiffs have been injured as a result of the Defendants racketeering, the Defendants jointly respond and answer that said allegations with respect to Defendants Shaw, Almand, and Rowland are completely false. Although the Defendants believe that the Plaintiffs have been harmed as a result of Spell's conduct, these Defendants have not participated in said conduct in any way. Therefore, the allegations shall stand adamantly and completely denied.

52.

The Defendants are unable to respond to the allegations contained in Paragraph Fifty Two of the Plaintiffs' Complaint because the Defendants have insufficient information regarding the Plaintiffs' injuries and therefore the allegations shall stand denied at this time. In further Answer, the Defendants show that any injuries suffered by the Plaintiffs are the result of conduct by Spell and not by any of these Defendants.

53.

The Defendants are unable to respond to the allegations contained in Paragraph Fifty Three of the Plaintiffs' Complaint because the Defendants have insufficient information regarding the nature of the Plaintiffs' injuries and whether injunctive relief is an appropriate interlocutory remedy; however, upon information and belief, the Plaintiffs' losses have already been fully realized by the Plaintiffs. There is no injunction that this Court can impose as of this writing with respect to these Defendants that is ripe for consideration or that has been properly

shown by the pleadings. In further Answer, the Defendants show that they have no assets in their possession or under their control which are even arguably the subject of this dispute or which may have given rise to the filing of this Complaint. Therefore, the allegations shall stand adamantly and completely denied. The Defendants hereby object to the motion for injunctive relief and urge the Court to move this matter ahead of all other matters on the docket and schedule a hearing on said motion within thirty (30) days.

**DENIAL OF COUNT SEVEN – RECEIVERSHIP**

54.

Paragraph Fifty Four of the Plaintiffs' Complaint contains mere recitations which require no response, be it an admission or denial.

55.

With respect to the averments contained in Paragraph Fifty Five of the Plaintiffs' Complaint, to wit: that the appointment of a receiver to investigate and seize the assets related to the Defendants wrongful activities, the Defendants respond and answer that they have no standing to object to the appointment of such a receiver and, upon proper legal showing, may join in the Plaintiffs petition for the appointment of a duly appointed and qualified receiver to examine and investigate, by lawful means, the books and accounts of their former employer, Defendant North Georgia Equipment Sales. In fact, the Defendants contend that such an investigation would serve to exonerate these Defendants of any and all allegations contained in this action. However, insofar as this petition for receivership has been broadly worded and is devoid of any assertion of a nexus between the fraudulent conduct of Spell and any personal assets of these Defendants, such as their personal residence, personal savings or checking accounts and the like, the Defendants object to the inclusion of their private and personal

resources within the ambit of any investigation. Nevertheless, these Defendants have engaged in no wrong doing whatsoever and have nothing to hide. Therefore, if this Court should see fit to appoint a receiver and include within the scope of an investigation the personal finances of these Defendants, the Defendants stand ready to fully assist the investigation.

56.

The Defendants incorporate herein by reference the response and answer contained in paragraph fifty five, above, regarding the Plaintiffs' request to empower said receiver to administer claims of all injured parties. In further Answer, the Defendants contend that any and all injuries caused to any aggrieved party were caused by Spell and not by these Defendants.

**DENIAL OF COUNT EIGHT – ATTORNEYS FEES AND EXPENSES OF LITIGATION**

57.

Paragraph Fifty Seven of the Plaintiffs' Complaint contains mere recitations which require no response, be it an admission or denial.

58.

With respect to the allegations contained in Paragraph Fifty Eight of the Plaintiffs' Complaint, to wit: that the Defendants have acted in bad faith and have been stubbornly litigious, the Defendants respond and answer that said allegations with respect to Defendants Shaw, Almand, and Rowland are completely false. Therefore, the allegations shall stand adamantly and completely denied. On the contrary, it is the Defendants who have incurred attorneys fees and other expenses of litigation to respond to a Complaint which is so far reaching and overbroad in its erroneous allegations of tortious, criminal, and unethical conduct by these employee Defendants.

The Defendants, in further Answer, tender the following Defenses:

FIRST DEFENSE

The Complaint fails to set forth a claim against these Defendants upon which relief can be granted.

SECOND DEFENSE

The Defendants deny that the Plaintiffs are entitled to the relief alleged with respect to these Defendants.

THIRD DEFENSE

The Defendants deny that they are indebted to the Plaintiffs in any sum.

FOURTH DEFENSE

The Defendants are not liable to the Plaintiffs because the Defendants breached no duty owed the Plaintiffs in regard to any occurrence giving rise to this Complaint.

FIFTH DEFENSE

The Defendants show that the Plaintiffs' alleged damages, if any, were caused by the tortious, criminal or unethical conduct of a person or entity other than these Defendants.

SIXTH DEFENSE

The Defendants show that the Plaintiffs' alleged damages, if any, were caused by the Plaintiffs' own negligence.

SEVENTH DEFENSE

The Plaintiffs' claims must fail because of the applicable rules of law which must be applied to the facts of this case.

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EIGHTH DEFENSE

The Plaintiffs' Complaint is barred by the applicable Statute of Limitations. \_\_\_\_\_

NINTH DEFENSE

The Plaintiffs' suit is barred by the legal principles of laches, waiver, and estoppel.

TENTH DEFENSE

The Defendants hereby incorporate by reference all affirmative defenses set forth in the Official Code of Georgia Annotated §§ 9-11-8, et seq., in order to preserve same pending completion of discovery and for trial.

ELEVENTH DEFENSE

The Plaintiffs, by the exercise of ordinary care and diligence, could have avoided the consequences of any act or failure to act of the Defendants.

TWELFTH DEFENSE

The Plaintiffs' claims against the Defendants are barred, in whole or in part, in that the Plaintiffs, directly or indirectly, authorized, consented to, participated in, acquiesced in, and/or ratified the actions and transactions complained of in the Complaint.

THIRTEENTH DEFENSE

The Plaintiffs' claims against the Defendants are barred, in whole or in part, by Plaintiffs' failure to exercise due diligence.

FOURTHEENTH DEFENSE

The Plaintiffs' claims against the Defendants are barred, in whole or in part, in that the Plaintiffs, by the exercise of ordinary care, could have avoided the consequences giving rise to or as a result of the actions or omissions of the Defendants. The Defendants specifically deny that they have committed any wrongful acts as alleged in the Complaint.

#### FIFTEENTH DEFENSE

The Plaintiffs claims against these Defendants must fail because there is no privity of contract between the Plaintiffs and these Defendants.

#### SIXTEENTH DEFENSE

The Plaintiffs claims against these Defendants must fail because the Plaintiffs have claimed to have engaged in the purchase and sale of securities transactions, with a person or entity – other than these Defendants – who was not a licensed securities broker and which transactions were governed by the regulations of the Securities and Exchange Commission (SEC) but which were not recorded with or approved by the SEC, and which sales did not follow the protocols for such transactions, at a time when the Plaintiffs knew that such other person was not licensed to sell securities.

#### SEVENTEENTH DEFENSE

The Defendants deny each and every averment, implicit or explicit, of the Complaint which has not already been specifically admitted or denied. In particular, the Defendants deny that there is any agreement or relationship whatsoever between these Defendants and the Plaintiffs as would support the claims stated in the Complaint.

#### EIGHTEENTH DEFENSE

To the extent that the Plaintiffs have alleged fraud, the Defendants move for a more definite statement regarding fraud purportedly committed by these Defendants.

#### NINETEENTH DEFENSE

To the extent that the Plaintiffs are seeking punitive damages, the Plaintiffs have failed to demonstrate a nexus between the harm suffered by the Plaintiffs and the conduct of these Defendants such as would authorize a punitive damages award.

TWENTIETH DEFENSE

To the extent that the Plaintiffs are seeking a preliminary and permanent injunction to seize and encumber the personal assets of these Defendants, the Plaintiffs have failed to demonstrate a nexus between the harm suffered by the Plaintiffs and the personal and private assets of these Defendants such as would authorize this Court to impose such a severe remedy.

TWENTY FIRST DEFENSE

To the extent that the Plaintiffs are seeking the appointment of a receiver to investigate, seize and liquidate the personal assets of these Defendants, the Plaintiffs have failed to demonstrate a nexus between the harm suffered by the Plaintiffs and the personal and private assets of these Defendants such as would authorize this Court to invade the privacy of these Defendants.

WHEREFORE the Defendants pray that this Complaint, and all of its allegations with respect to these Defendants be completely dismissed with prejudice and that all costs cast upon the Plaintiffs.

Respectfully submitted this 18<sup>th</sup> day of March 2009.

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Arturo Corso  
Georgia State Bar No. 188748  
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WENDELL SPELL, NORTH GEORGIA  
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DEBORAH ALMAND,  
and GREGORY ROWLAND,

Defendants.

CIVIL ACTION FILE

NO. 2009CV703A

**CERTIFICATE OF SERVICE**

This is to certify that I have this day served a true and correct copy of the foregoing upon counsel for the opposing party by United States Mail with sufficient postage affixed thereon and addressed as follows:

Mr. Ralph Taylor, Attorney at Law  
2160 Morningside Drive, Suite 200  
Buford, Georgia 30518

This 18<sup>th</sup> day of March 2009.

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Arturo Corso  
Attorney for Defendants

**IN THE SUPERIOR COURT OF HALL COUNTY**

**STATE OF GEORGIA**

GASPARE BADALAMENTE, RON BROCK,  
BOB CHRISTMAS, HUNTER FLEMING,  
REX GRANT, NEPTUNE HOLDINGS, LLC,  
RICK HAMILTON, MATT HANDTE,  
JAY HOLLANDER, ARDEN HOTHEM,  
FRANK LAKE, ROBERT MONROE,  
THOMAS SHOLES, JUDD WILLIAMS,  
DONALD R. WILLERS, ALLAN B. COOK,  
and MICHAEL GOTTSMAN,

Plaintiffs,

vs.

WENDELL SPELL, NORTH GEORGIA  
EQUIPMENT SALES, LLC, SAM SHAW,  
DEBORAH ALMAND,  
and GREGORY ROWLAND,

Defendants.

CIVIL ACTION FILE

NO. 2009CV703A

**VERIFICATION**

Personally appeared before the undersigned officer duly appointed to administer oaths came the Defendant, Sam Shaw, who after reviewing the contents of the Answer in the instant matter, and under penalty of perjury, does hereby swear or affirm that the contents of the Answer are true and correct to the best of his knowledge.

This \_\_\_\_\_ day of March 2009.

\_\_\_\_\_  
Sam Shaw

\_\_\_\_\_  
Notary Public

**IN THE SUPERIOR COURT OF HALL COUNTY**

**STATE OF GEORGIA**

GASPARE BADALAMENTE, RON BROCK,  
BOB CHRISTMAS, HUNTER FLEMING,  
REX GRANT, NEPTUNE HOLDINGS, LLC,  
RICK HAMILTON, MATT HANDTE,  
JAY HOLLANDER, ARDEN HOTHEM,  
FRANK LAKE, ROBERT MONROE,  
THOMAS SHOLES, JUDD WILLIAMS,  
DONALD R. WILLERS, ALLAN B. COOK,  
and MICHAEL GOTTSMAN,

Plaintiffs,

vs.

WENDELL SPELL, NORTH GEORGIA  
EQUIPMENT SALES, LLC, SAM SHAW,  
DEBORAH ALMAND,  
and GREGORY ROWLAND,

Defendants.

CIVIL ACTION FILE

NO. 2009CV703A

**VERIFICATION**

Personally appeared before the undersigned officer duly appointed to administer oaths came the Defendant, Debra Almand, who after reviewing the contents of the Answer in the instant matter, and under penalty of perjury, does hereby swear or affirm that the contents of the Answer are true and correct to the best of her knowledge.

This \_\_\_\_ day of March 2009.

\_\_\_\_\_  
Debra Almand

\_\_\_\_\_  
Notary Public

**IN THE SUPERIOR COURT OF HALL COUNTY**

**STATE OF GEORGIA**

GASPARE BADALAMENTE, RON BROCK,  
BOB CHRISTMAS, HUNTER FLEMING,  
REX GRANT, NEPTUNE HOLDINGS, LLC,  
RICK HAMILTON, MATT HANDTE,  
JAY HOLLANDER, ARDEN HOTHEM,  
FRANK LAKE, ROBERT MONROE,  
THOMAS SHOLES, JUDD WILLIAMS,  
DONALD R. WILLERS, ALLAN B. COOK,  
and MICHAEL GOTTSMAN,

Plaintiffs,

vs.

WENDELL SPELL, NORTH GEORGIA  
EQUIPMENT SALES, LLC, SAM SHAW,  
DEBORAH ALMAND,  
and GREGORY ROWLAND,

Defendants.

CIVIL ACTION FILE

NO. 2009CV703A

**VERIFICATION**

Personally appeared before the undersigned officer duly appointed to administer oaths came the Defendant Gregory Rowland, who after reviewing the contents of the Answer in the instant matter, and under penalty of perjury, does hereby swear or affirm that the contents of the Answer are true and correct to the best of his knowledge.

This \_\_\_\_ day of March 2009.

\_\_\_\_\_  
Gregory Rowland

\_\_\_\_\_  
Notary Public

*Corso, Kennedy & Campbell*  
*Attorneys at Law*  
*A Limited Liability Partnership*

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March 17, 2009

Ralph L. Taylor, III  
Attorney at Law  
Buckley King, LPA  
2160 Morningside Drive, Suite 200  
Buford, Georgia 30518  
VIA CERTIFIED MAIL WITH RETURN RECEIPT

RE: GASPARE BADALAMENTE, et al vs. WENDELL SPELL, et al  
Hall County Superior Court Civil Action File No. 2009CV703A

**\*\*\* STATUTORY NOTICE OF INTENT TO BRING SUIT FOR ABUSIVE \*\*\***  
**\*\*\* LITIGATION PURSUANT TO O.C.G.A. §51-7-80, ET. SEQ. AND §9-15-14 \*\*\***

Dear Mr. Taylor,

Greetings. This firm represents Mr. Sam Shaw, Mrs. Debra Almand, and Mr. Gregory Rowland, secondary Defendants in the above referenced matter. Pursuant to O.C.G.A. §51-7-84, et seq. and §9-15-14 you are notified that these Defendants will seek attorney's fees, court costs, expenses of litigation, and other damages against the Plaintiffs in the above styled matter and counsel for the Plaintiffs, for abusive litigation in said matter.

You may avoid the consequences of your actions by voluntarily withdrawing, abandoning, discontinuing, or dismissing the above styled civil action within thirty (30) days of the mailing of this notice. Govern yourselves accordingly.

Sincerely,

Arturo Corso  
Attorney at Law