

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

**UNITED STATES OF AMERICA EX
REL. CORI RIGSBY AND KERRY RIGSBY**

RELATORS

VERSUS

CIVIL ACTION NO. 1:06CV00433-LTS-RHW

**STATE FARM INSURANCE COMPANY,
ALLSTATE INSURANCE COMPANY,
USAA INSURANCE COMPANY,
FORENSIC ANALYSIS & ENGINEERING CORPORATION,
EXPONENT FAILURE ANALYSIS,
HAAG ENGINEERING CO.,
JADE ENGINEERING,
RIMKUS CONSULTING COMPANY INC.,
And STRUCTURES GROUP**

DEFENDANTS

MOTION FOR LEAVE TO FILE AMENDED ANSWER

COMES NOW the defendant, Forensic Analysis and Engineering Co., Inc. ("FAEC") and moves the Court for leave to file an Amended Answer, pursuant to Rule 15 (a) (2), Fed.R.Civ.P. A copy of the proposed Amended Answer is attached hereto as Exhibit A.

In support, FAEC would show that all parties have consented to the filing of the proposed Amended Answer, and have agreed to file their written consent hereto.

WHEREFORE, FAEC moves the Court for leave to file its Amended Answer, as evidenced by the attached Exhibit A.

Respectfully submitted,

**FORENSIC ANALYSIS & ENGINEERING
CORPORATION**

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CERTIFICATE OF SERVICE

I hereby certify that on November 18, 2008, I electronically filed the foregoing with the clerk of the Court using the ECF system, which sent notification of such filing to the following:

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s/Robert D. Gholson

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DEFENDANTS

**FIRST AMENDED ANSWER OF FORENSIC ANALYSIS & ENGINEERING
CORPORATION**

COMES NOW the defendant, Forensic Analysis & Engineering Corporation (“FAEC”) and makes this its First Amended Answer and Defenses to the *RELATORS’ FIRST AMENDED COMPLAINT FOR DAMAGES UNDER THE FALSE CLAIMS ACT, 31 USC §3729 ET SEQ.*, as follows:

FIRST DEFENSE

FAEC has previously filed an Amended and Supplemental Joinder [252] in certain motions as more particularly described therein. As a part of its First Amended Answer, FAEC readopts and realleges all of the various motions and defenses asserted in the Amended and Supplemental Joinder, to the same extent as if copied in full herein. For the reasons set forth in said motions, FAEC moves that it be dismissed with prejudice from this action, with all costs assessed to the Relators.

SECOND DEFENSE

To the extent not otherwise pled, FAEC would show that Relators' First Amended Complaint ("Complaint") fails to state a claim against FAEC upon which relief may be granted, and FAEC therefore moves that said Complaint be dismissed pursuant to Rule 12 (b) (6), Fed.R.Civ.P.

THIRD DEFENSE

Some or all of the claims fail to state a claim upon which relief may be granted.

FOURTH DEFENSE

Relators have failed to comply with Rules 8 & 9 of the Federal Rules of Civil Procedure, as certain matters have not been pled with the requisite particularity and/or specificity.

FIFTH DEFENSE

Some or all of the claims may be barred by the applicable statutes of limitations.

SIXTH DEFENSE

Some or all of the claims are barred by the doctrines of laches and/or unclean hands.

SEVENTH DEFENSE

The Government and Relators have failed to mitigate their alleged damages, if any.

EIGHTH DEFENSE

Relators are not an original source.

NINTH DEFENSE

FAEC reserves unto itself and invokes any and all rights afforded to it under Mississippi's Tort Reform Acts, including but not limited to MISS. CODE ANN. § 11-1-65, as amended, as well as any limits on punitive damages described therein.

TENTH DEFENSE

Some or all of the claims are barred by the applicable provisions of the contracts, policies and/or agreements at issue in this litigation.

ELEVENTH DEFENSE

FAEC denies that Relators or the Government are entitled to any recovery from FAEC in the premises. In the alternative, Relators' recovery, if any, should be barred or reduced by their contributory or comparative negligence or fault. FAEC invokes apportionment of fault as to all parties and non-parties who may be jointly or severally liable for Relators' alleged injuries.

TWELFTH DEFENSE

At all times relevant hereto, FAEC acted and conducted itself well within the standards applicable to it as a reasonable and prudent engineering firm, and at no time was there any negligence or breach of those standards by FAEC.

THIRTEENTH DEFENSE

Punitive damages violate the due process, equal protection, and excessive fines clauses of the constitutions of the United States of America and the State of Mississippi.

FOURTEENTH DEFENSE

No act or omission of FAEC was malicious, willful, wanton, reckless or grossly negligent and, therefore, any award of punitive damages is barred. Additionally, because of the lack of clear standards, the imposition of punitive damages against FAEC is unconstitutionally vague and/or over-broad.

FIFTEENTH DEFENSE

With respect to Relators' demand for punitive damages, FAEC specifically incorporates by reference any and all standards or limitations regarding the determination and enforceability

of punitive damage awards which arose by virtue of the United States Supreme Court's decisions in *Philip Morris USA v. Williams*, 549 U.S. 346, 127 S.Ct. 1057 (2007), *State Farm v. Campbell*, 538 U.S. 408, 123 S.Ct. 1513 (2003), *BMW of North America v. Gore*, 517 U.S. 559, 116 S.Ct. 1589 (1996) and *TXO Production Corp. v. Alliance Resources, Inc.*, 509 U.S. 443, 113 S.Ct. 2711 (1993).

SIXTEENTH DEFENSE

The claims for punitive damages cannot be sustained because an award of punitive damages without proof of every element of such claim beyond a reasonable doubt would violate FAEC's due process rights under the Fourteenth Amendment to the United States Constitution and under Article 3, § 14 of the Constitution of the State of Mississippi.

SEVENTEENTH DEFENSE

Alternatively, unless all of FAEC's alleged liability for punitive damages and the appropriate amount of punitive damages to be assessed are required to be established by clear and convincing evidence, any award of punitive damages would violate FAEC's due process rights guaranteed by the Fourteenth Amendment to the United States Constitution and by Article 3, § 14 of the Constitution of the State of Mississippi.

EIGHTEENTH DEFENSE

The claims for punitive damages cannot be sustained because an award of punitive damages subject to an excessive pre-determined upper limit would violate FAEC's due process rights guaranteed by the Fourteenth Amendment to the United States Constitution and by Article 3, § 14 of the Constitution of the State of Mississippi, and may result in a violation of FAEC's right not to be subjected to an excessive award in violation of the Excessive Fines Clause of the

Eighth Amendment to the United States Constitution and Article 3, § 28 of the Constitution of the State of Mississippi.

NINETEENTH DEFENSE

The claims for punitive damages cannot be sustained because an award of punitive damages by a fact finder that is not provided with standards of sufficient clarity and uniformity for determining the appropriateness or the appropriate size of a punitive damage award would violate FAEC's due process and equal protection rights guaranteed by the Fourteenth Amendment to the United States Constitution and by Article 3, § 14 of the Constitution of the State of Mississippi.

TWENTIETH DEFENSE

The claims for punitive damages cannot be sustained because an award of punitive damages by a fact finder that is not instructed on the limits of punitive damages imposed by the applicable principles of deterrence and punishment and is not instructed to award only that amount of punitive damages as reflects a necessary relationship between the amount of punitive damages and the actual harm in question would violate FAEC's due process and equal protection rights guaranteed by the Fourteenth Amendment to the United States Constitution and by Article 3, § 14 of the Constitution of the State of Mississippi.

TWENTY-FIRST DEFENSE

The claims for punitive damages cannot be sustained because an award of punitive damages by a fact finder that is not expressly prohibited from awarding punitive damages, in whole or in part, on the basis of an invidiously discriminatory characteristic, including FAEC's corporate status, would violate FAEC's due process and equal protection rights guaranteed by

the Fourteenth Amendment to the United States Constitution and by Article 3, § 14 of the Constitution of the State of Mississippi.

TWENTY-SECOND DEFENSE

The claims for punitive damages cannot be sustained because an award of punitive damages by a fact finder that is permitted to award punitive damages under standards for determining liability for, and the amount of, punitive damages that are vague, imprecise, inconsistent and arbitrary and do not define with sufficient clarity to give advance notice to a potential defendant of the prohibited conduct or mental state that makes an award of punitive damages possible, would violate FAEC's due process and equal protection rights guaranteed by the Fourteenth Amendment to the United States Constitution and by Article 3, § 14 of the Constitution of the State of Mississippi.

TWENTY-THIRD DEFENSE

The claims for punitive damages cannot be sustained because an award of punitive damages by a fact finder that is not subject to trial and appellate court review on the basis of uniform and objective standards would violate FAEC's due process and equal protection rights guaranteed by the Fourteenth Amendment to the United States Constitution and by Article 3, § 14 of the Constitution of the State of Mississippi.

TWENTY-FOURTH DEFENSE

The claims for punitive damages cannot be sustained because an award of punitive damages without affording FAEC protections similar to those that are accorded to criminal defendants, including, but not limited to, the protection against unreasonable searches and seizures, double jeopardy or impermissible multiple punishments and compelled self-incrimination, and the right to confront adverse witnesses, to compulsory process for favorable

witnesses, and to the effective assistance of counsel, would violate FAEC's rights guaranteed by the Fourteenth Amendment to the United States Constitution and the Fourth, Fifth and Sixth Amendments as incorporated into the Fourteenth Amendment to the United States Constitution and under Article 3, §§ 14, 22, 26 and 31 of the Constitution of the State of Mississippi.

TWENTY-FIFTH DEFENSE

Only one person may bring a *qui tam* action under the False Claims Act and therefore all, or at least one, of the Relators must be dismissed as to each allegation under the False Claims Act.

TWENTY-SIXTH DEFENSE

The claims for punitive damages are barred by Article 3, § 17 of the Mississippi Constitution.

TWENTY-SEVENTH DEFENSE

The Government (including FEMA) would be obligated to arbitrate, not litigate, all of the claims Relators purport to assert herein as Relators. The Government (including FEMA) having given no notice to FAEC of a dispute covered by the applicable arbitration provision and having made no demand for arbitration, has not asserted or properly authorized the claims putatively brought by Relators herein. Accordingly, for this and related reasons, Relators lack standing to assert these claims and the entirety of the claims herein should be dismissed. Additionally and alternatively, should the Government (including FEMA) subsequently give notice to FAEC of a dispute covered by the applicable arbitration provision and/or make a demand for arbitration under the Arrangement or otherwise, FAEC reserves the right to demand and require arbitration of all such claims related to that dispute.

TWENTY-EIGHTH DEFENSE

Some or all of the claims may be barred by the doctrines of merger, waiver or discharge.

TWENTY-NINTH DEFENSE

FAEC pleads insufficiency of process and/or service of process as to some or all Defendants.

THIRTIETH DEFENSE

Relators have not specifically stated their special damages, if any, as required by Fed. R. Civ. P. 9(g). Accordingly, they are barred from recovering any such damages.

THIRTY-FIRST DEFENSE

Some or all of the claims are barred by 31 U.S.C. § 3730(e)(4) and 31 U.S.C. § 3730(b)(5).

THIRTY-SECOND DEFENSE

Some or all of the claims are barred by public policy.

THIRTY-THIRD DEFENSE

Some or all of the claims are barred by documents and information which are of public record.

THIRTY-FOURTH DEFENSE

Some or all of the claims may be barred by lack of standing.

THIRTY-FIFTH DEFENSE

Some or all of the claims are barred by the filed-rate and regulatory approval doctrines.

THIRTY-SIXTH DEFENSE

Some or all of the claims are barred by the doctrines of exclusive or primary jurisdiction.

THIRTY-SEVENTH DEFENSE

Some or all of the claims are barred because FAEC complied with all applicable statutes and with the requirements and regulations of the appropriate regulatory agencies.

THIRTY-EIGHTH DEFENSE

Some or all of the claims are barred by independent contractor status and/or the fact that FAEC lacks *respondent superior* or other vicarious liability for certain persons.

THIRTY-NINTH DEFENSE

Some or all of the claims are barred due to preemption by federal law, including federal statutes and regulations.

FORTIETH DEFENSE

Some or all of the claims may be barred by the employment-at-will doctrine.

FORTY-FIRST DEFENSE

Discovery has not been completed and FAEC reserves the right to assert any additional affirmative defenses that may be justified as additional facts become known.

FORTY-SECOND DEFENSE

Some or all of the claims may be barred by United States Pub. Law 106-102 (1999), section 104, the Graham-Leach-Bliley Act of 1999, and the regulations promulgated thereunder.

FORTY-THIRD DEFENSE

Some or all of the claims may be barred by estoppel, collateral estoppel, judicial estoppel, and/or res judicata.

FORTY-FOURTH DEFENSE

Some or all of the claims may be barred by the doctrines of illegality and/or intervening or superseding cause.

FORTY-FIFTH DEFENSE

FAEC specifically denies that Relators or the Government are entitled to an award in the premises. In the alternative, FAEC would show that to the extent that damages are shown, then such damages, if any, were the result of the actions or inactions of parties other than FAEC, for which FAEC is not liable either directly or vicariously.

FORTY-SIXTH DEFENSE

Some or all of the claims are barred by contamination through champerty and maintenance.

FORTY-SEVENTH DEFENSE

The False Claims Act and this Action are in violation of the United States Constitution's Appointments Clause and the Take Care Clause of Article II.

FORTY-EIGHTH DEFENSE

Some or all of the claims or requested remedies may be barred by payment and satisfaction.

FORTY-NINTH DEFENSE

Some or all of the claims or the requested remedies may be barred by consent, ratification and/or merger.

FIFTIETH DEFENSE

Some or all of the claims or the requested remedies may be barred by the failure of conditions precedent.

FIFTY-FIRST DEFENSE

This Court lacks subject matter jurisdiction over the claims against FAEC in this Action.

FIFTY-SECOND DEFENSE

Some or all of the claims have been misjoined. This Action should be severed due to misjoinder of both claims and parties. *See* Fed. R. Civ. P. 20 & 21. The misjoinder of the claims is so severe and inappropriate that it rises to a level which will deny FAEC certain state and federal constitutional protections, including the right to due process and a fair trial.

FIFTY-THIRD DEFENSE

Some or all of the claims may be barred by the doctrine of *in pari delicto*, as Relators may have actively and knowingly participated in the alleged wrongdoing of which they complain.

FIFTY-FOURTH DEFENSE

Some or all of the claims may be barred by the statutes and regulations relating to the National Flood Insurance Program.

FIFTY-FIFTH DEFENSE

Some or all of the claims may be barred by the doctrines of sovereign compulsion and/or approval.

FIFTY-SIXTH DEFENSE

Some or all of the claims may be barred by the statutes and regulations governing the Federal Emergency Management Agency and its operations/powers.

FIFTY-SEVENTH DEFENSE

FAEC pleads recoupment and/or set-off.

FIFTY-EIGHTH DEFENSE

Relators' personal claims are barred due to their having engaged in unprivileged unlawful acts.

FIFTY-NINTH DEFENSE

To the extent applicable to FAEC, some or all of the claims may be barred by rulings and/or orders in *E.A. Renfroe & Company, Inc. v. Cori Rigsby Moran and Kerri Rigsby*; in the United States District Court for the Northern District of Alabama, Southern Division; Civil Action No. 2:06cv01752-WMA-JEO.

SIXTIETH DEFENSE

Some or all of the claims are barred by the Government Knowledge Defense.

SIXTY-FIRST DEFENSE

Some or all of the claims are barred by public disclosure, and/or Relators' public disclosures.

SIXTY-SECOND DEFENSE

The Government and Relators have not suffered any actual injury or damages.

SIXTY-THIRD DEFENSE

For purposes of the "Reverse False Claims" allegation, during the relevant period, there existed no "obligation" upon FAEC to transfer money to the United States Government as that term is used in 31 U.S.C.A. § 3729(a)(7).

SIXTY-FOURTH DEFENSE

All allegations of the Complaint not otherwise admitted or denied herein are hereby denied, for lack of sufficient information to respond.

SIXTY-FIFTH DEFENSE

This Court lacks jurisdiction due to the Government's failure to exhaust mandatory remedies, including mandatory contractual and arbitration remedies.

SIXTY-SIXTH DEFENSE

To the extent applicable to FAEC, the Complaint and all claims herein are barred by the April 4, 2008 “Order of Disqualification and for the Exclusion of Evidence” and “Memorandum Opinion on Motion to Disqualify Members of the Katrina Litigation Group and Associated Counsel” in *Thomas C. McIntosh and Pamela McIntosh v. State Farm Fire and Casualty Company, Forensic Analysis & Engineering Corp., E.A. Renfroe & Company, Inc. and David Stanovich*; in the United States District Court for the Southern District of Mississippi, Southern Division; Civil Action No. 1:06cv01080-LTS-RHW, docket nos. 1172 & 1173.

SIXTY-SEVENTH DEFENSE

Relators lack standing to bring this action, are barred from prosecuting this Action, are barred from serving as witnesses in this Action and/or are precluded from using any unlawfully obtained evidence in this Action by the April 4, 2008 “Order of Disqualification and for the Exclusion of Evidence” and “Memorandum Opinion on Motion to Disqualify Members of the Katrina Litigation Group and Associated Counsel” in *Thomas C. McIntosh and Pamela McIntosh v. State Farm Fire and Casualty Company, Forensic Analysis & Engineering Corp., E.A. Renfroe & Company, Inc. and David Stanovich*; in the United States District Court for the Southern District of Mississippi, Southern Division; Civil Action No. 1:06cv01080-LTS-RHW, docket nos. 1172 & 1173.

ANSWER

Comes now the Defendant, FAEC, and responds to the allegations of the Complaint as follows:

1. Paragraphs 1, 2, 3 and 4 of the Complaint are largely statements of law, to which no

response is required. Otherwise, and to the extent that these paragraphs might be construed to make affirmative allegations against this Defendant, FAEC would show that it lacks knowledge or information sufficient to form a belief about the truth of said allegations.

2. FAEC lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in paragraphs 5 and 6 of the Complaint.

3. It is admitted that FAEC conducted some limited business in this district immediately after Hurricane Katrina. Subject to the other defenses pled herein, FAEC admits only that it is properly before the court and that venue is proper in this district. Otherwise, paragraph 7 of the Complaint is denied.

4. FAEC lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in paragraphs 8, 9, 10, 11, 12, 13, 14, 15 and 16 of the Complaint.

5. In response to paragraph 17, it is admitted that FAEC is in business to provide engineering services to its clients, which sometimes include insurance companies. It is further admitted that these services occasionally involve rendering opinions concerning the causes of certain losses, which sometimes are secondary to wind or water exposure. Otherwise, paragraph 17 is denied.

6. FAEC lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in paragraphs 18, 19, 20, 21, and 22 of the Complaint.

7. The recitation of paragraph 23 is merely a definition of “Engineering Defendants”, to which no answer is required. To the extent that said paragraph is construed to constitute affirmative allegations against FAEC, same are denied.

8. FAEC admits on information and belief that Alexis “Lecky” King was an employee of

State Farm at some point during the time in question. Otherwise, FAEC lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in paragraphs 24, 25 and 26 of the Complaint.

9. FAEC lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in paragraphs 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, and 39 of the Complaint.

10. The recitations of paragraphs 40, 41, and 42 are factual recitations of meteorological phenomena, to which no answer is required. To the extent that said paragraphs are construed to constitute affirmative allegations against FAEC, same are denied.

11. FAEC lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in paragraphs 43, 44 and 45 of the Complaint.

12. FAEC lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in paragraphs 46, 47, 48, 49, 50 and 51 of the Complaint.

13. Paragraph 52 is a recitation of legal materials, to which no answer is required. To the extent that said paragraphs are construed to constitute affirmative allegations against FAEC, same are denied.

14. FAEC lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in paragraphs 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64 and 65 of the Complaint.

15. It is admitted that on or about October 4, 2005, FAEC received an assignment from State Farm relative to the property located at 2558 S. Shore Drive, Biloxi, MS (“the McIntosh property”), and that FAEC carried out that assignment, which included a site inspection. The

remainder of paragraph 66 of the Complaint is denied, and FAEC specifically denies any wrongdoing in connection with said inspection and assignment.

16. Paragraph 67 of the Complaint is denied.

17. FAEC admits that the portion of the report copied in paragraph 68 is a true and correct copy of that portion of the document in question. To the extent that said paragraph is construed adversely to FAEC, then the paragraph is denied.

18. FAEC lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in paragraph 69 of the Complaint.

19. FAEC admits that the portion of the report copied in paragraph 70 is a true and correct copy of that portion of the document in question. Otherwise, paragraph 70 is denied.

20. Paragraph 71 is denied as phrased, except that FAEC admits receiving an assignment from State Farm for the Mullins home at 6057 Pine Tree Drive, Kiln, MS.

21. FAEC admits the contents of its reports relative to the Mullins home, as reflected in the documents, which speak for themselves. Otherwise, FAEC denies the allegations of paragraphs 72, 73, 74, 75, 76 and 77 of the Complaint. FAEC specifically denies any wrongdoing in connection with said inspection and assignment.

22. FAEC lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in paragraphs 78, 79, 80, 81, 82, 83, 84 and 85 of the Complaint.

23. FAEC lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in paragraphs 86, 87, 88, 89, 90 and 91 of the Complaint.

24. FAEC lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in paragraphs 92, 93, 94, 95 and 96 of the Complaint.

25. FAEC lacks knowledge or information sufficient to form a belief about the truth of the

allegations stated in paragraphs 97, 98, 99 and 100 of the Complaint.

26. FAEC lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in paragraphs 101, 102, 103, 104, 105, 106 and 107 of the Complaint.

27. In response to paragraph 108 of the Complaint, FAEC restates and adopts by reference all of its responses to the preceding paragraphs of the Complaint.

28. To the extent that the allegations of paragraph 109 seek to impose liability on FAEC, said allegations are denied. As to the balance of paragraph 109, FAEC lacks knowledge or information sufficient to form a belief about the truth of those allegations.

29. FAEC lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in paragraphs 110, 111, 112 (including all subparagraphs thereof), 113, 114 and 115 of the Complaint.

30. FAEC denies that unnumbered paragraph immediately following paragraph 115 and beginning, “WHEREFORE, Relators demand judgment ...”, and further specifically denies that Relators are entitled to any relief whatsoever based on the allegations of Count I of the Complaint.

31. In response to paragraph 116 of the Complaint, FAEC restates and adopts by reference all of its responses to the preceding paragraphs of the Complaint.

32. To the extent that the allegations of paragraph 117 seek to impose liability on FAEC, said allegations are denied. As to the balance of paragraph 117, FAEC lacks knowledge or information sufficient to form a belief about the truth of those allegations.

33. FAEC lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in paragraph 118 of the Complaint.

34. To the extent that the allegations of paragraph 119 and 120 seek to impose liability on

FAEC, said allegations are denied. As to the balance of paragraphs 119 and 120, FAEC lacks knowledge or information sufficient to form a belief about the truth of those allegations.

35. FAEC lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in paragraphs 121 and 122 of the Complaint.

36. FAEC denies that unnumbered paragraph immediately following paragraph 122 and beginning, “WHEREFORE, Relators demand judgment ...”, and further specifically denies that Relators are entitled to any relief whatsoever based on the allegations of Count II of the Complaint.

37. In response to paragraph 123 of the Complaint, FAEC restates and adopts by reference all of its responses to the preceding paragraphs of the Complaint.

38. To the extent that the allegations of paragraphs 124, 125, 126 (including all subparagraphs thereof), 127, 128, 129, 130, 131 and 132 (including all subparagraphs thereof) seek to impose liability on FAEC, said allegations are denied. As to the balance of paragraphs 124, 125, 126 (including all subparagraphs thereof), 127, 128, 129, 130, 131 and 132 (including all subparagraphs thereof), FAEC lacks knowledge or information sufficient to form a belief about the truth of those allegations.

39. FAEC lacks knowledge or information sufficient to form a belief about the truth of the allegations stated in paragraphs 133 and 134 of the Complaint.

40. FAEC denies that unnumbered paragraph immediately following paragraph 134 and beginning, “WHEREFORE, Relators demand judgment ...”, and further specifically denies that Relators are entitled to any relief whatsoever based on the allegations of Count III of the Complaint.

41. In response to paragraph 135 of the Complaint, FAEC restates and adopts by reference all

of its responses to the preceding paragraphs of the Complaint.

42. To the extent that the allegations of paragraphs 136, 137, 138, 139, 140, 141, 142, 143, 144 and 145 seek to impose liability on FAEC, said allegations are denied. As to the balance of paragraphs 136, 137, 138, 139, 140, 141, 142, 143, 144 and 145, FAEC lacks knowledge or information sufficient to form a belief about the truth of those allegations.

43. FAEC denies that unnumbered paragraph immediately following paragraph 145 and beginning, “WHEREFORE, Relators demand judgment ...”, and further specifically denies that Relators are entitled to any relief whatsoever based on the allegations of Count IV of the Complaint.

44. The allegations of paragraphs 146, 147, 148, 149, 150, 151, 152, 153 (including all subparagraphs thereof), 154 and the unnumbered paragraph immediately following paragraph 154 beginning, “WHEREFORE, Relators demand judgment ...” do not pertain to FAEC, and thus no answer is required. However, to the extent that the allegations of paragraphs 146, 147, 148, 149, 150, 151, 152, 153, 154 and the unnumbered paragraph immediately following paragraph 154 beginning, “WHEREFORE, Relators demand judgment ...” are construed against FAEC or otherwise seek to impose liability on FAEC, said allegations are denied.

AND NOW, having set out its affirmative defenses hereto and its responses to the allegations of the Complaint, Defendant FAEC moves that said Complaint be fully and finally dismissed with prejudice as to FAEC, with all costs thereof and FAEC’s reasonable attorneys fees assessed to Relators. FAEC prays for such other relief to which it might be entitled in the premises.

Respectfully submitted,

**FORENSIC ANALYSIS & ENGINEERING
CORPORATION**

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CERTIFICATE OF SERVICE

I hereby certify that on December ____, 2008, I electronically filed the foregoing with the clerk of the Court using the ECF system, which sent notification of such filing to the following:

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