

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

JEREMY ALLEN MAYFIELD and
MAYFIELD MOTORSPORTS, INC.,

Plaintiffs,

vs.

NATIONAL ASSOCIATION FOR
STOCK CAR AUTO RACING, INC.;
BRIAN ZACHARY FRANCE; AEGIS
SCIENCES CORPORATION; DAVID
LEE BLACK, Ph.D.; and DOUGLAS F.
AUKERMAN, M.D.,

Defendants.

Case No. 3:09-cv-00220-GCM

**ANSWER OF DEFENDANTS AEGIS SCIENCES CORPORATION, DAVID L.
BLACK, PH.D., AND DOUGLAS F. AUKERMAN, M.D.**

Defendants Aegis Sciences Corporation (“Aegis Labs”), David L. Black, Ph.D., and Douglas F. Aukerman, M.D., (together “Defendants”) respond to Plaintiffs Jeremy Mayfield’s (“Mayfield”) and Mayfield Motorsports, Inc.’s (“MMI”) Complaint (the “Complaint”) as follows:

1. Upon information and belief, Defendants admit that Mayfield is a citizen and resident of Catawba County, North Carolina.
2. Upon information and belief, Defendants admit that MMI is a corporation organized under the laws of the State of North Carolina with offices located in Iredell County, North Carolina.

3. Upon information and belief, Defendants admit that NASCAR is a corporation incorporated under the laws of the State of Florida with its principal place of business in Daytona Beach, Florida and offices in New York, California, and North Carolina.

4. Defendants are without sufficient knowledge to admit or deny the allegations in Paragraph 4 of the Complaint.

5. Defendants admit that Aegis Sciences Corporation (“Aegis Labs”) is a corporation organized under the laws of the State of Tennessee, but deny that Aegis Labs maintains a business office in Wake County, North Carolina.

6. Defendants deny the allegations contained in Paragraph 6, except Defendants admit that Dr. David L. Black (“Dr. Black”) is a citizen of Tennessee and is President and CEO of Aegis Labs.

7. Defendants deny the allegations contained in Paragraph 6, except that Defendants admit that Dr. Douglas F. Aukerman (“Dr. Aukerman”) is a citizen of Pennsylvania.

8. To the extent that Paragraph 8 of the Complaint purports to state conclusions of law, or otherwise characterizes the nature of the claims alleged in the Complaint, no response is required. To the extent an answer is required, the allegations are denied.

9. To the extent that Paragraph 9 of the Complaint purports to state conclusions of law, or otherwise characterizes the nature of the claims alleged in the Complaint, no response is required. To the extent an answer is required, the allegations are denied.

10. To the extent that Paragraph 10 of the Complaint purports to state conclusions of law, or otherwise characterizes the nature of the claims alleged in the Complaint, no response is required. To the extent an answer is required, the allegations are denied.

11. To the extent that Paragraph 11 of the Complaint purports to state conclusions of law, or otherwise characterizes the nature of the claims alleged in the Complaint, no response is required. To the extent an answer is required, the allegations are denied.

12. Defendants admit that the Complaint seeks damages in excess of \$10,000.00, but deny that Plaintiffs are entitled to any relief.

13. Defendants are without sufficient knowledge to admit or deny the allegations of Paragraph 13 of the Complaint.

14. Defendants are without sufficient knowledge to admit or deny the allegations of Paragraph 14 of the Complaint.

15. Defendants are without sufficient knowledge to admit or deny the allegations of Paragraph 15 of the Complaint.

16. Defendants are without sufficient knowledge to admit or deny the allegations of Paragraph 16 of the Complaint.

17. Defendants are without sufficient knowledge to admit or deny the allegations of Paragraph 17 of the Complaint.

18. Defendants are without sufficient knowledge to admit or deny the allegations of Paragraph 18 of the Complaint.

19. Defendants are without sufficient knowledge to admit or deny the allegations of Paragraph 19 of the Complaint.

20. Defendants are without sufficient knowledge to admit or deny the allegations of Paragraph 20 of the Complaint.

21. Defendants are without sufficient knowledge to admit or deny the allegations of Paragraph 21 of the Complaint.

22. Defendants are without sufficient knowledge to admit or deny the allegations of Paragraph 22 of the Complaint.

23. Defendants are without sufficient knowledge to admit or deny the allegations of Paragraph 23 of the Complaint.

24. Defendants are without sufficient knowledge to admit or deny the allegations of Paragraph 24 of the Complaint.

25. Defendants are without sufficient knowledge to admit or deny the allegations of Paragraph 25 of the Complaint.

26. Defendants are without sufficient knowledge to admit or deny the allegations of Paragraph 26 of the Complaint.

27. Defendants are without sufficient knowledge to admit or deny the allegations of Paragraph 27 of the Complaint.

28. Defendants deny the allegations contained in Paragraph 28 of the Complaint, except Defendants admit that Mayfield is subject to the NASCAR Substance Abuse Policy. Defendants further state that the Substance Abuse Policy is a written document that speaks for itself.

29. Defendants deny the allegations contained in Paragraph 29 of the Complaint, and Defendants state that the Substance Abuse Policy is a written document that speaks for itself. Defendants state that NASCAR implemented changes to its Substance Abuse Policy in January of 2009.

30. Defendants deny the allegations contained in Paragraph 30 of the Complaint, and Defendants state that the Substance Abuse Policy is a written document that speaks for itself.

31. Defendants deny the allegations contained in Paragraph 31 of the Complaint, and Defendants state that the Substance Abuse Policy is a written document that speaks for itself. Defendants admit that Aegis Labs is a SAMHSA-certified lab.

32. Defendants deny the allegations contained in Paragraph 32 of the Complaint, and Defendants state that the Substance Abuse Policy is a written document that speaks for itself.

33. Defendants are without sufficient knowledge to admit or deny the allegations of Paragraph 33 of the Complaint.

34. Defendants are without sufficient knowledge to admit or deny the allegations of Paragraph 34 of the Complaint.

35. Defendants are without sufficient knowledge to admit or deny the allegations of Paragraph 35 of the Complaint.

36. Defendants are without sufficient knowledge to admit or deny the allegations of Paragraph 36 of the Complaint.

37. Defendants deny the allegations contained in Paragraph 37, except Defendants admit that Claritin is a sponsor of a NASCAR race team.

38. Defendants are without sufficient knowledge to admit or deny the allegations of Paragraph 38 of the Complaint.

39. Defendants are without sufficient knowledge to admit or deny the allegations of Paragraph 39 of the Complaint.

40. Defendants deny the allegations contained in Paragraph 40 of the Complaint, except admit that Mayfield was instructed by an Aegis Labs representative on the procedure that would be followed to collect his urine sample.

41. Defendants deny the allegations contained in Paragraph 41 of the Complaint, except admit that Aegis Labs operates a forensic chemical and drug testing laboratory which is SAMHSA-certified, and that Aegis Labs was hired to perform drug testing for NASCAR.

42. Defendants deny the allegations contained in Paragraph 42 of the Complaint, except admit that Aegis Labs collects, transports, and tests specimens for the presence of prohibited substances pursuant to NASCAR's Substance Abuse Policy.

43. To the extent that paragraph 43 of the Complaint purports to state conclusions of law, or otherwise characterizes the nature of the claims alleged in the Complaint, no response is required. To the extent an answer is required, the allegations are denied.

44. Defendants deny the allegations contained in Paragraph 44 of the Complaint, except admit that after being informed by Mayfield that he ingested Claritin-D, an Aegis representative told Mayfield that he would need to inform Dr. Black about Mayfield's medications.

45. Defendants admit the allegations of Paragraph 45 of the Complaint.

46. To the extent that paragraph 46 of the Complaint purports to state conclusions of law, or otherwise characterizes the nature of the claims alleged in the Complaint, no response is required. To the extent an answer is required, the allegations are denied.

47. Defendants deny the allegations contained in Paragraph 47 of the Complaint, except admit that Mayfield urinated in a sample cup and returned the sample to an Aegis representative.

48. Defendants deny the allegations contained in Paragraph 48 of the Complaint, and state that the sealing strips initialed by Mayfield were attached to the A-sample and B-sample drug test vials in the presence of Mayfield.

49. Defendants deny the allegations contained in Paragraph 49 of the Complaint, and state that the sealing strips initialed by Mayfield were attached to the A-sample and B-sample drug test vials in the presence of Mayfield.

50. Defendants deny the allegations contained in Paragraph 50 of the Complaint, except admit that an Aegis representative provided Mayfield with Black's name and cellular phone number.

51. Defendants deny the allegations of Paragraph 51 of the Complaint.

52. Defendants deny the allegations contained in Paragraph 52 of the Complaint, except admit Dr. Black spoke with Mayfield via telephone on Sunday, May 3, 2009 while Dr. Black was on vacation.

53. Defendants deny the allegations of Paragraph 53 of the Complaint, except admit that Mayfield told Dr. Black he took [REDACTED] pursuant to a prescription.

Defendants state that Dr. Black expressed concern that Mayfield could not have been properly diagnosed in a single thirty-minute office visit as represented by Mayfield.

54. Defendants deny the allegations of Paragraph 54 of the Complaint, and state that Dr. Black told Mayfield, based on what Mayfield told Dr. Black, that the tests would reveal the level of pseudoephedrine in excess of the NASCAR Substance Abuse Policy limit, but that an explanation of allergy use might be acceptable to explain the presence of pseudoephedrine in urine.

55. Defendants deny the allegations of Paragraph 55 of the Complaint, except admit Dr. Aukerman called and informed Mayfield that his urine test tested positive for [REDACTED]. Defendants state that during the same call, Dr. Aukerman told Mayfield that his urine tested positive for [REDACTED], and further state that Dr. Aukerman had not met or spoken with Mayfield prior to the May 7, 2009 phone call.

56. Defendants deny the allegations of Paragraph 56 of the Complaint, except admit that Dr. Aukerman is employed by Penn State Orthopaedics and Rehabilitation and is not employed by Aegis Labs.

57. Defendants deny the allegations of Paragraph 57 of the Complaint.

58. Defendants are without sufficient knowledge to admit or deny the allegations of Paragraph 58 of the Complaint.

59. Defendants deny the allegations of Paragraph 59 of the Complaint, except admit Dr. Aukerman did call Mayfield on May 8, 2009 to verify that Dr. Aukerman received the fax with Mayfield's medical records. Defendants state that Mayfield was asked if he had taken any diet medications or inhalers (and specifically, Vick's Inhaler)

and Mayfield denied that he had. Mayfield claimed that he ingested only Mucinex, Claritin-D, and [REDACTED].

60. Defendants deny the allegations of Paragraph 60 of the Complaint, except admit that Mayfield returned a call from Dr. Aukerman to state that he inhaled fumes from a fiery wreck in the Talladega race.

61. Defendants deny the allegations of Paragraph 61 of the Complaint. Defendants state that Dr. Aukerman notified Mayfield that his A-sample test was positive for [REDACTED] with no medical explanation and that his B-sample test was in storage.

62. Defendants deny the allegations of Paragraph 62 of the Complaint.

63. Defendants deny the allegations of Paragraph 63 of the Complaint, except admit that Dr. Aukerman denied Mayfield's offer for an additional urine sample.

64. Defendants deny the allegations of Paragraph 64 of the Complaint.

65. Defendants deny the allegations of Paragraph 65 of the Complaint.

66. Defendants deny the allegations of Paragraph 66 of the Complaint, and state that Dr. Aukerman stated that he would report the positive [REDACTED] test result to NASCAR.

67. Defendants deny the allegations of Paragraph 67 of the Complaint.

68. Defendants deny the allegations of Paragraph 68 of the Complaint.

69. Defendants deny the allegations of Paragraph 69 of the Complaint.

70. Defendants deny the allegations of Paragraph 70 of the Complaint.

71. Defendants are without sufficient knowledge to admit or deny the allegations of Paragraph 71 of the Complaint.

72. Defendants are without sufficient knowledge to admit or deny the allegations of Paragraph 72 of the Complaint.

73. Defendants are without sufficient knowledge to admit or deny the allegations of Paragraph 73 of the Complaint.

74. Defendants are without sufficient knowledge to admit or deny the allegations of Paragraph 74 of the Complaint.

75. Defendants deny the allegations contained in Paragraph 75 of the Complaint. Defendants state that Black, in responding to statements made by Mayfield in the press, stated that Mayfield's public statements did not explain the results of the test.

76. Defendants are without sufficient knowledge to admit or deny the allegations of Paragraph 76 of the Complaint as they concern Brian Z. France, and deny the remaining allegations.

77. Defendants deny the allegations of Paragraph 77 of the Complaint.

78. Defendants are without sufficient knowledge to admit or deny the allegations of Paragraph 78 of the Complaint.

79. Defendants are without sufficient knowledge to admit or deny the allegations of Paragraph 79 of the Complaint.

80. Defendants are without sufficient knowledge to admit or deny the allegations of Paragraph 80 of the Complaint.

81. Defendants are without sufficient knowledge to admit or deny the allegations of Paragraph 81 of the Complaint.

82. Defendants deny the allegations of Paragraph 82, and Defendants state that the NASCAR Substance Abuse Policy is a written document that speaks for itself.

83. Defendants deny the allegations of Paragraph 83 of the Complaint, except admit that Aegis is certified by the U.S. Department of Health and Human Services.

84. To the extent that Paragraph 84 of the Complaint purports to state conclusions of law, or otherwise characterizes the nature of the claims alleged in the Complaint, no response is required. To the extent an answer is required, the allegations are denied. Defendants deny that the Guidelines and Procedure apply to the Mayfield samples or to any facilities engaged in non-federal agency testing.

85. To the extent that Paragraph 85 of the Complaint purports to state conclusions of law, or otherwise characterizes the nature of the claims alleged in the Complaint, no response is required. To the extent an answer is required, the allegations are denied. Defendants deny that the Guidelines and Procedure apply to the Mayfield samples or to any facilities engaged in non-federal agency testing.

86. To the extent that Paragraph 86 of the Complaint purports to state conclusions of law, or otherwise characterizes the nature of the claims alleged in the Complaint, no response is required. To the extent an answer is required, the allegations are denied. Defendants deny that the CSERA apply to the Mayfield samples or to any facilities engaged in non-federal agency testing.

87. Defendants deny the allegations of Paragraph 87 of the Complaint, except admit that Aegis Labs tested Mayfield's urine sample.

88. Defendants deny the allegations of Paragraph 88 of the Complaint. Defendants state that Dr. Aukerman notified Mayfield of a positive test for [REDACTED] and [REDACTED] on May 7, 2009.

89. Defendants deny the allegations of Paragraph 89 of the Complaint.

90. To the extent that Paragraph 90 of the Complaint purports to state conclusions of law, or otherwise characterizes the nature of the claims alleged in the Complaint, no response is required. To the extent an answer is required, the allegations are denied. Defendants deny that the MRO Manual applies to the Mayfield samples or to any facilities engaged in non-federal agency testing.

91. To the extent that Paragraph 91 of the Complaint purports to state conclusions of law, or otherwise characterizes the nature of the claims alleged in the Complaint, no response is required. To the extent an answer is required, the allegations are denied. Defendants deny that the MRO Manual applies to the Mayfield samples or to any facilities engaged in non-federal agency testing.

92. Defendants deny the allegations of Paragraph 92 of the Complaint, except admit that Dr. Aukerman is the Medical Review Officer for NASCAR's drug testing program.

93. Defendants deny the allegations of Paragraph 93 of the Complaint. Defendants deny that the Guidelines and Procedure apply to the Mayfield samples or to any facilities engaged in non-federal agency testing.

94. Defendants deny the allegations of Paragraph 94 of the Complaint. Defendants deny that the Guidelines and Procedure apply to the Mayfield samples or to any facilities engaged in non-federal agency testing.

95. Defendants deny the allegations of Paragraph 95 of the Complaint. Defendants deny that the Guidelines and Procedure apply to the Mayfield samples or to any facilities engaged in non-federal agency testing.

96. Defendants deny the allegations of Paragraph 96 of the Complaint. Defendants deny that the Guidelines and Procedure apply to the Mayfield samples or to any facilities engaged in non-federal agency testing.

97. Defendants deny the allegations of Paragraph 97 of the Complaint. Defendants deny that the Guidelines and Procedure apply to the Mayfield samples or to any facilities engaged in non-federal agency testing.

FIRST CLAIM FOR RELIEF

(Defamation Against All Defendants)

98. Defendants admit that Paragraph 98 purports to incorporate Paragraphs 1 through 97 of the Complaint as if fully set forth herein.

99. Defendants deny the allegations of Paragraph 99 of the Complaint.

100. Defendants deny the allegations of Paragraph 100 of the Complaint.

101. Defendants deny the allegations of Paragraph 101 of the Complaint.

102. Defendants deny the allegations of Paragraph 102 of the Complaint.

103. Defendants deny the allegations of Paragraph 103 of the Complaint.

104. Defendants deny the allegations of Paragraph 104 of the Complaint.

105. Defendants deny the allegations of Paragraph 105 of the Complaint.

106. Defendants deny the allegations of Paragraph 106 of the Complaint.

107. Defendants deny the allegations of Paragraph 107 of the Complaint.

SECOND CLAIM FOR RELIEF

(Breach of North Carolina Persons with Disabilities Protection Act)

108. Defendants admit that Paragraph 108 purports to incorporate Paragraphs 1 through 107 of the Complaint as if fully set forth herein.

109. Paragraph 109 contains no allegations directed towards Defendants; therefore, no response is required. To the extent a response is necessary, Defendants deny the allegations of Paragraph 109 of the Complaint.

110. Paragraph 110 contains no allegations directed towards Defendants; therefore, no response is required. To the extent a response is necessary, Defendants deny the allegations of Paragraph 110 of the Complaint.

111. Paragraph 111 contains no allegations directed towards Defendants; therefore, no response is required. To the extent a response is necessary, Defendants deny the allegations of Paragraph 111 of the Complaint.

112. Paragraph 112 contains no allegations directed towards Defendants; therefore, no response is required. To the extent a response is necessary, Defendants deny the allegations of Paragraph 112 of the Complaint.

113. Paragraph 113 contains no allegations directed towards Defendants; therefore, no response is required. To the extent a response is necessary, Defendants deny the allegations of Paragraph 113 of the Complaint.

THIRD CLAIM FOR RELIEF

(Unfair and Deceptive Trade Practice)

114. Defendants admit that Paragraph 114 purports to incorporate Paragraphs 1 through 113 as if fully set forth herein.

115. Defendants deny the allegations of Paragraph 115 of the Complaint.

116. Defendants deny the allegations of Paragraph 116 of the Complaint.

117. Defendants deny the allegations of Paragraph 117 of the Complaint.

118. Defendants deny the allegations of Paragraph 118 of the Complaint.

FOURTH CLAIM FOR RELIEF

(Breach of Contract/Third Party Damages)

119. Defendants admit that Paragraph 119 purports to incorporate Paragraphs 1 through 118 as if fully set forth herein.

120. Defendants admit the allegations of Paragraph 120 of the Complaint.

121. Defendants deny the allegations of Paragraph 121 of the Complaint.

122. Defendants deny the allegations of Paragraph 122 of the Complaint.

123. Defendants admit the allegations of Paragraph 123 of the Complaint.

124. Defendants are without sufficient knowledge to admit or deny the allegations of Paragraph 124 of the Complaint.

125. Defendants deny the allegations of Paragraph 125 of the Complaint.

126. Defendants deny the allegations of Paragraph 126 of the Complaint.

FIFTH CLAIM FOR RELIEF

(Negligence)

127. Defendants admit that Paragraph 127 purports to incorporate Paragraphs 1 through 126 as if fully set forth herein.

128. Defendants deny the allegations of Paragraph 128 of the Complaint.

129. Defendants deny the allegations of Paragraph 129 of the Complaint.

130. Defendants deny the allegations of Paragraph 130 of the Complaint.

131. Defendants deny the allegations of Paragraph 131 of the Complaint.

132. Defendants deny the allegations of Paragraph 132 of the Complaint.

SIXTH CLAIM FOR RELIEF

(Punitive Damages Against All Defendants)

133. Defendants admit that Paragraph 133 purports to incorporate Paragraphs 1 through 132 as if fully set forth herein.

134. Defendants deny the allegations of Paragraph 134 of the Complaint.

135. Defendants deny the allegations of Paragraph 135 of the Complaint.

136. Defendants deny the allegations of Paragraph 136 of the Complaint.

SEVENTH CLAIM FOR RELIEF

(Injunctive Relief Against All Defendants)

137. Defendants admit that Paragraph 137 purports to incorporate Paragraphs 1 through 136 as if fully set forth herein.

138. Defendants deny the allegations of Paragraph 138 of the Complaint.

139. Defendants deny the allegations of Paragraph 139 of the Complaint.

140. Defendants deny the allegations of Paragraph 140 of the Complaint.

141. Defendants deny the allegations of Paragraph 141 of the Complaint.

142. Defendants generally deny all allegations not expressly admitted and deny that Mayfield is entitled to any relief.

AFFIRMATIVE DEFENSES

1. The Complaint fails to state a claim against Defendants upon which relief can be granted.

2. Plaintiffs' claims are barred because they have not suffered injury in fact.

3. Plaintiffs' claims are barred, in whole or in part, because their damages, if any, were not caused by any act or conduct of the Defendants.

4. Plaintiffs' claims are barred, in whole or in part, because their alleged damages are speculative or unforeseeable.

5. Plaintiffs' claims are barred, in whole or in part, by the doctrine of intervening causation because their injuries, if any, were caused by the actions of third parties for which the Defendants are not responsible.

6. Plaintiffs' claims are barred, in whole or in part, because the Defendants are entitled to allocation of damages according the percentage of fault of each third party whose negligence, tortious or wrongful conduct caused harm, if any, to Plaintiffs.

7. Plaintiffs' claims are barred, in whole or in part, because Plaintiffs' injury, if any, was caused by Mayfield's own negligence and tortious or wrongful conduct.

8. Plaintiffs' claims are barred, in whole or in part, because they failed to mitigate their alleged damages.

9. Plaintiffs' claims are barred, in whole or in part, because they have released NASCAR, the testing facilities, and Medical Review Officers it has retained to implement the Substance Abuse Policy from any claim that they might otherwise have.

10. Plaintiffs' defamation claim is barred by the doctrines of estoppel and waiver because Plaintiffs have expressly acknowledged that Defendants are entitled to publish the results of any drug tests conducted pursuant to NASCAR's Substance Abuse Policy and the circumstances giving rise to such test, and Plaintiffs have expressly waived any claim against Defendants with respect to such publication.

11. Plaintiffs' defamation claim is barred because Plaintiffs have not suffered reputational harm.

12. Plaintiffs' defamation claim is barred because the statements made about Mayfield are protected free speech pursuant to the First Amendment.

13. Plaintiffs' defamation claim is barred because the statements are privileged.

14. Plaintiffs' defamation claim is barred because the statements are true.

15. Plaintiffs' defamation claim is barred because the statements were made without malice.

16. Plaintiffs' defamation claim is barred because Mayfield is a public figure.

17. Plaintiffs' unfair and deceptive business practices claim is barred because Plaintiffs are neither consumers nor direct competitors of the Defendants, and Plaintiffs therefore lack standing to bring such claim.

18. Plaintiffs' claim for breach of NASCAR's contract with defendant Aegis Labs is barred because Plaintiffs are not parties to this contract.

19. Plaintiffs' claim for breach of NASCAR's contract with defendant Aegis Labs is barred because Plaintiffs are not intended or third-party beneficiaries of this contract.

20. Plaintiffs' claim for injunctive relief is barred because their unclean hands prevent them from invoking the equitable powers of the court.

21. Plaintiffs' claim for relief is barred because there is no patient/doctor relationship between any of the Defendants and any of the Plaintiffs.

22. Plaintiffs' claim for relief is barred because there is no contractual relationship between any of the Defendants and any of the Plaintiffs.

PRAYER FOR RELIEF

WHEREFORE, Defendants respectfully request judgment in its favor against Jeremy Mayfield and Mayfield Motorsports, Inc. as follows:

- (a) That Plaintiffs have and recover nothing from Defendants;
- (b) Award Defendants attorneys' fees pursuant to N.C. Gen. Stat. § 75-16.1;
- (c) Award Defendants attorneys' fees pursuant to N.C. Gen. Stat. §6-21.5;
- and
- (d) Award such other and further relief as the Court may deem just and proper.

Dated: June 5, 2009

Respectfully submitted,

/s/ T. Paul Hendrick

/s/ Matthew Bryant

/s/ Timothy Nerhood

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Attorneys for Defendants Aegis Sciences

Corporation, David L. Black, and Douglas F.

Aukerman

CERTIFICATE OF SERVICE

I hereby certify that on June 5, 2009, I electronically filed the Defendants' Answer along with exhibits, if any, with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

William K. Diehl, Jr.
John R. Buric
Richard S. Wright
James, McElroy & Diehl, P.A.
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Charlotte, NC 28202
Attorneys Plaintiff

This is the 5th day of June, 2009.

/s/ Matthew Bryant