

ESTTA Tracking number: **ESTTA16391**

Filing date: **10/05/2004**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

<b>Proceeding</b>	91160296
<b>Party</b>	Plaintiff Barrow Energies, Inc.  Barrow Energies, Inc. P.O. Box 277 Butler, GA 31006 UNITED STATES
<b>Correspondence Address</b>	Jeffrey B. Sladkus Womble Carlyle Sandridge & Rice, PLLC 1201 West Peachtree Street Suite 3500 Atlanta, GA 30309 UNITED STATES jsladkus@wcsr.com
<b>Submission</b>	Motion to Suspend for Civil Action
<b>Filer's Name</b>	Jeanene L. Jobst
<b>Filer's e-mail</b>	jjobst@wcsr.com
<b>Signature</b>	/Jeanene L. Jobst/
<b>Date</b>	10/05/2004
<b>Attachments</b>	motion to suspend.tif ( 26 pages )

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

BARROW ENERGIES, INC.,	)	
	)	
Opposer,	)	
	)	Opposition No. 91160296
v.	)	Serial No. 76/516,019
	)	
FERRELLGAS PARTNERS, L.P.,	)	
	)	
Applicant.	)	
_____	)	

**MOTION TO SUSPEND PROCEEDING AND CHANGE OF CORRESPONDENCE**

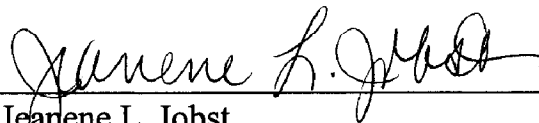
Pursuant to 37 C.F.R. § 2.117 and TBMP § 510.02, Barrow Energies, Inc. (hereinafter “Opposer”), by and through the undersigned counsel, hereby moves the Trademark Trial and Appeal Board to suspend this proceeding. In support of its Motion, Applicant submits the following:

1. The parties to this proceeding are engaged in a federal civil action which bears directly on this case, namely Ferrellgas Partners, et. al. v. Homer Barrow, Janet Whitley and Barrow Energies, Inc., Civil Action No. 4:03-CV-107-2, pending in the United States District Court for the Middle District of Georgia Columbus Division (the “Civil Action”).
2. The Civil Action involves issues in common with this proceeding.
3. A copy of the First Amended Complaint and Answer and Defenses from the Civil Action are attached as Composite Exhibit A.
4. The motion is timely. An Answer has been filed in this proceeding and all issues are joined.

Opposer thereby requests suspension of this proceeding until termination of the Civil Action.

In addition, Opposer requests that all future correspondence concerning this matter be directed to the following:

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Attorneys for Opposer

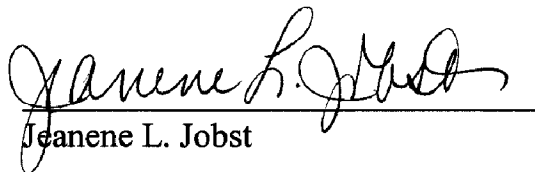
Dated: 10/5/04

**CERTIFICATE OF SERVICE**

I hereby certify that that the foregoing MOTION TO SUSPEND PROCEEDING was deposited in the United States Mail, first class, postage prepaid and addressed as follows:

Michael Elbein  
Thomas H. Van Hoozer  
Cheryl L. Burbach  
HOVEY WILLIAMS LLP  
2405 Grand Boulevard, Suite 400  
Kansas City, MO 64108

Dated: 10/5/04



Jeanene L. Jobst

**EXHIBIT A**

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
COLUMBUS DIVISION

FILED  
U.S. DISTRICT COURT  
MIDDLE DISTRICT OF GEORGIA

03 AUG 26 AM 9:

DEPUTY CLERK

FERRELLGAS PARTNERS, L.P.,  
FERRELLGAS, L.P.,  
and FERRELLGAS, INC.

Plaintiffs,

vs.

HOMER BARROW  
Rt. 2, Box 488B  
Butler, GA 31006

JANET WHITLEY  
P.O. Box 1100  
Buena Vista, GA 31803

and

BARROW ENERGIES, INC.  
P.O. Box 1100  
Buena Vista, GA 31803

Defendants.

Civil Case No. ~~4-03-CV-107-2~~

**FIRST AMENDED COMPLAINT**

Plaintiffs Ferrellgas Partners, L.P., Ferrellgas, L.P., and Ferrellgas, Inc. (hereinafter "Ferrellgas") for their first amended complaint against defendants Homer Barrow ("Barrow"), Janet Whitley ("Whitley"), and Barrow Energies, Inc. ("Barrow Energies") and state as follows:

**PARTIES, JURISDICTION, AND VENUE**

1. Plaintiff Ferrellgas Partners, L.P. is a Delaware limited partnership with its principal place of business in Liberty, Missouri.

2. Plaintiff Ferrellgas, L.P. is a Delaware limited partnership with its principal place of business in Liberty, Missouri.

3. Plaintiff Ferrellgas, Inc. is a Delaware corporation with its principal place of business in Liberty, Missouri.

4. Homer Barrow is an individual residing in Georgia, who can be served at Rte. 2, Box 488B, Butler, GA 31006.

5. Janet Whitley is an individual residing in Georgia, who can be served at P.O. Box 1100, Buena Vista, GA 31803.

6. Based on information and belief, Barrow Energies, Inc. is a Georgia corporation with its principal place of business in Butler, Georgia. Janet Whitley serves as registered agent for Barrow Energies, Inc.

7. For the reasons set forth above, the Court has personal jurisdiction over Homer Barrow, Janet Whitley, and Barrow Energies, Inc.

8. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. §§ 1331, 1338 and 1367.

9. Venue is proper in this Court under 28 U.S.C. § 1391.

### GENERAL ALLEGATIONS

#### Homer Barrow

10. Since at least as early as 1983 until December 1, 1999, Homer Barrow was the sole shareholder of and operated Barrow Propane Gas, Inc. whose principal place of business was in Butler, Georgia.

11. Barrow Propane is in the business of selling and transporting propane gas, and does so in an area which includes portions of Georgia and Alabama.

12. On December 1, 1999, Homer Barrow sold all of the shares of stock of Barrow Propane to Pro Am Southeast, Inc. ("ProAm") and DQE Systems, Inc. ("DQE") for over \$8,450,000.

13. In conjunction with this stock sale, Homer Barrow personally agreed (1) not to engage in any propane or energy related business; (2) not to work for or assist anyone engaged in such businesses; and (3) not to become a partner, shareholder, director, or obtain any other type of interest in such a business in Georgia for four years.

#### **Janet Whitley**

14. Janet Whitley is Homer Barrow's daughter and ran the office for Barrow Propane.

15. When Homer Barrow sold his stock to Pro Am, Pro Am offered employment to Janet Whitley as General Manager of Central Georgia, at a salary of \$60,000 per year, plus incentives.

16. As a condition of this position, Whitley signed a confidentiality/noncompete agreement.

17. As part of this agreement, Whitley agreed not to compete for one year after the termination of her employment.

18. Whitley further agreed not to solicit or induce other employees to leave the company or hire any such employees for two years after ending her employment.

#### **Ferrellgas Purchases Barrow Propane**

19. Ferrellgas generally is engaged in the business of marketing and sale of propane gas, and operates both directly and indirectly through various subsidiaries.

20. On December 13, 2002, Ferrellgas obtained from ProAm and DQE, via stock purchase and subsequent merger, a number of properties, including Barrow Propane.

21. Ferrellgas paid \$42,000,000.00 for these properties. The value of Barrow Propane constituted a significant portion of the total.

22. As part of this purchase, Ferrellgas obtained all rights to the trademarks and trade names (and the goodwill associated with the same) used in connection with "Barrow Propane," including but not limited to BARROW, BARROW PROPANE and BARROW PROPANE GAS (collectively referred to as "BARROW Marks").

23. Pro Am had continued to use the BARROW Marks in connection with the sale and transport of propane gas since its stock purchase of Barrow Propane.

24. At all times since its purchase of Barrow Propane, Ferrellgas has continued the use of the BARROW Marks, including prominently displaying the same on trucks, propane tanks and sales invoices, as well as other items and documents. Examples of such use are attached as ~~Exhibits~~ and incorporated by reference.

25. Ferrellgas has applied to register the trademark BARROW PROPANE GAS before the United States Patent and Trademark office. That application has been assigned Serial No. 76/516,019, and is pending.

26. Plaintiff Ferrellgas Partners, L.P. is the owner of the trademarks at issue in this Complaint, and these trademarks are used by Ferrellgas Partners, L.P. or through its affiliated entities such as plaintiffs Ferrellgas, L.P. and Ferrellgas, Inc.

#### **Defendants Form Barrow Energies to Compete with Barrow Propane**

27. Whitley refused to sign a noncompete or nonsolicit agreement with Ferrellgas.

28. After Ferrellgas continued to insist that Whitley sign a noncompete and nonsolicit agreement, Whitley resigned around March of 2003.

29. Defendants have formed a new business called Barrow Energies.



30. Based on information and belief, defendants have appropriated Ferrellgas employees from Barrow Propane and are blatantly attempting to utilize the goodwill that Homer Barrow previously sold for approximately 8.5 million dollars.

31. Based on information and belief, defendants Barrow and Whitley have authorized and actively directed the adoption and use of Ferrellgas' BARROW Marks by the defendants, and have personally participated in the infringing use of Ferrellgas' BARROW Marks in connection with propane and the sale of propane.

32. Defendants have advertised "Barrow Energies, Inc." in the Butler newspaper. ~~Ex. 22~~

33. Defendants have also used the trademark and trade name BARROW by placing the same on at least one of its propane tanks. ~~Ex. 23~~

34. Defendants have incorporated Barrow Energies, Inc. in Georgia, with Janet Whitley serving as its registered agent.

35. Defendants have filed an application for an LPG license for Barrow Energies with the Georgia state Fire Marshall's office.

36. Upon information and belief, defendants have been planning and preparing to solicit Barrow Propane employees and customers for several months, if not years.

37. In late 2001, Homer Barrow built a bulk propane storage plant (30,000 gallons) on his farm. Based on information and belief, defendants plan to use this storage tank as part of their propane business.

38. When Homer Barrow built his large storage tank, Kenneth Welsh, Senior Vice President of Pro Am, asked Whitley about the tank.

39. Whitley told Welsh that her father was simply going to use it for his own equipment and had no intention of getting back into the propane business.

40. Based on information and belief, defendants have taken actions that are directly competitive with Ferrellgas, including but not limited to causing several employees including almost all of the Barrow Propane Butler office, to quit at or around the same time, and making misrepresentations about Barrow Propane, causing a serious detriment to Ferrellgas' ability to respond to the competition.

### UNFAIR COMPETITION UNDER 15 U.S.C. § 1125

#### (Against all defendants)

41. Ferrellgas incorporates by reference its allegations in paragraphs 1 through 40.

42. Defendants are using the trademark and trade name BARROW and BARROW ENERGIES in connection with the sale and transport of propane gas.

43. Defendants' use of BARROW and BARROW ENERGIES is likely to cause confusion or mistake, or to deceive consumers into believing that defendants' business is affiliated, associated, or connected with Ferrellgas' "Barrow Propane" business.

44. Defendants' use of BARROW and BARROW ENERGIES is likely to cause confusion or mistake, or to deceive consumers regarding the origin, sponsorship, or approval of defendants' goods, services, or commercial activities.

45. Ferrellgas has no control over the quality of the goods and services offered by defendants, and because of the likelihood of confusion as to source or association engendered by defendants, Ferrellgas' goodwill in its BARROW Marks is being damaged.

46. Defendants' use of BARROW and BARROW ENERGIES is in violation of § 43(a) of the Lanham Act, codified at 15 U.S.C. § 1125(a).

47. Ferrellgas has been and/or is likely to be damaged by defendants' use of BARROW and BARROW ENERGIES.

48. The harm that defendants' wrongful acts will cause to Ferrellgas is both imminent and irreparable, and the amount of damage sustained by Ferrellgas will be difficult to ascertain if these acts continue.

49. Defendants' use of BARROW and BARROW ENERGIES to mislead consumers is willful, and Ferrellgas is entitled to its attorneys fees and all costs associated with this litigation.

50. Ferrellgas is entitled under 15 U.S.C. § 1117(a) to an equitable portion of defendants' profits in addition to any actual damages. Such award should be enhanced to a sum not exceeding three times its amount.

### UNFAIR COMPETITION UNDER GEORGIA LAW

#### (Against all defendants)

51. Ferrellgas incorporates by reference its allegations in paragraphs 1 through 50.

52. Defendants' improper use of BARROW and BARROW ENERGIES, violates the Georgia Uniform Deceptive Trade Practices Act and Georgia common law.

53. Ferrellgas has been and/or is likely to be damaged by defendants' use of BARROW and BARROW ENERGIES.

54. The harm that defendants' wrongful acts will cause to Ferrellgas is both imminent and irreparable, and the amount of damage sustained by Ferrellgas will be difficult to ascertain if these acts continue.

55. Defendants' use of BARROW and BARROW ENERGIES to mislead consumers is willful, and Ferrellgas is entitled to its attorneys fees and all costs associated with this litigation.

### **BREACH OF CONTRACT**

#### **(against defendants Homer Barrow and Janet Whitley)**

56. Ferrellgas incorporates by reference its allegations in paragraphs 1 through 55 above.

57. The conduct of Homer Barrow and Janet Whitley is in violation of the individual agreements with ProAm not to compete and/or solicit customers or employees.

58. As a result of the breaches by Homer Barrow and Janet Whitley, Ferrellgas has sustained and will continue to sustain irreparable harm.

59. The conduct of Homer Barrow and Janet Whitley has been intentional, deliberate, willful, malicious, and motivated by a specific intent to damage Ferrellgas' business for their personal gain and profit.

### **BREACH OF DUTY OF LOYALTY**

#### **(against defendant Janet Whitley)**

60. Ferrellgas incorporates by reference its allegations in paragraphs 1 through 59 above.

61. Janet Whitley, as an employee of Ferrellgas, owed and/or owes a duty of loyalty to Ferrellgas.

62. Whitley's actions have breached these duties.

63. As a result of Whitley's breaches, Ferrellgas has sustained and will continue to sustain irreparable harm.

64. Whitley's conduct has been intentional, deliberate, willful, malicious, and motivated by a specific intent to damage Ferrellgas' business for her personal gain and profit.

### **TORTIOUS INTERFERENCE WITH CONTRACT**

**(against all defendants)**

65. Ferrellgas incorporates by reference its allegations in paragraphs 1 through 64 above.

66. Defendants had knowledge of employment contracts between Ferrellgas and its employees and contracts between Ferrellgas and its customers.

67. Defendants have intentionally interfered with these contracts by knowingly and improperly inducing, causing, or encouraging (1) Ferrellgas employees to leave their employment with Ferrellgas to solicit customers of Ferrellgas, and (2) Ferrellgas customers to end their contractual relationship with Ferrellgas.

68. Defendants' conduct is without justification or privilege.

69. As a result of defendants' conduct, Ferrellgas has sustained and will continue to sustain irreparable harm.

70. Defendants' conduct has been intentional, deliberate, willful, malicious, and motivated by a specific intent to damage Ferrellgas' business for their personal gain and profit.

### **UNJUST ENRICHMENT**

**(against defendants Homer Barrow and Janet Whitley)**

71. Ferrellgas incorporates by reference its allegations in paragraphs 1 through 70 above.

72. Homer Barrow and Janet Whitley have received benefits from Ferrellgas or its predecessor in interest which must equitably be returned to Ferrellgas.

73. These benefits include, but are not limited to:

- a. Homer Barrow receiving \$8.5 million for the sale of a business, the value of which was based substantially on Homer Barrow's customer base, only to use this money to start a competing business and appropriate this exact customer base.
- b. Defendant Whitley, receiving full wages from Ferrellgas, while using Ferrellgas time and equipment to plan and implement a competing business and to lure almost all of Barrow Propane's employees to work for defendants.

74. As a result of the breaches by Homer Barrow and Janet Whitley, Ferrellgas has sustained and will continue to sustain irreparable harm.

75. The conduct of Janet Whitley and Homer Barrow has been intentional, deliberate, willful, malicious, and motivated by a specific intent to damage Ferrellgas' business for their personal gain and profit.

### **TORTIOUS INTERFERENCE WITH BUSINESS RELATIONS**

#### **(against all defendants)**

76. Ferrellgas incorporates by reference its allegations in paragraphs 1 through 75 above.

77. Defendants had knowledge of business relations between Ferrellgas and its customers and potential customers.

78. Defendants have intentionally interfered with these business relations by knowingly and improperly inducing, causing, or encouraging Ferrellgas customers and potential customers not to enter into or continue a business relationship with Ferrellgas.

79. Defendants' conduct is without justification or privilege.

80. As a result of defendants' conduct, Ferrellgas has sustained and will continue to sustain irreparable harm.

81. Defendants' conduct has been intentional, deliberate, willful, malicious and motivated by a specific intent to damage Ferrellgas' business for their personal gain and profit.

WHEREFORE, Ferrellgas prays for the following relief against defendants Homer Barrow, Janet Whitley, and Barrow Energies, Inc.:

- A. Damages for defendants' misleading use of the trademarks and trade names BARROW, BARROW ENERGIES, and any other substantially similar trademark or trade name, including actual damages, an equitable portion of defendants' profits, and a trebling of these damages pursuant to 15 U.S.C. § 1117.
- B. Preliminary and permanent injunctions prohibiting defendants from using the trademarks and trade names BARROW, BARROW ENERGIES, or any other substantially similar trademark or trade name with the word "Barrow" in it, or any other name that is confusingly similar to the BARROW marks, pursuant to 15 U.S.C. § 1116.
- C. Preliminary and permanent injunctions prohibiting defendants from using improper means to contact any Ferrellgas employees during the pendency of this action and beyond.
- D. Preliminary and permanent injunctions enforcing the agreements entered into by Homer Barrow and Janet Whitley.
- E. Actual damages to compensate Ferrellgas for all losses incurred as a result of defendants' breaches of their agreements, Whitley's breaches of her duty of loyalty, defendants' tortious interference with Ferrellgas contracts, and defendants' unjust enrichment by Ferrellgas.

F. Punitive damages based upon the willful, wanton, malicious, and outrageous conduct by defendants.

G. Ferrellgas' costs and reasonable attorney's fees incurred in pursuing this action; and

H. Such other and further relief as this Court deems just and appropriate.

Ferrellgas demands a jury trial on all claims.

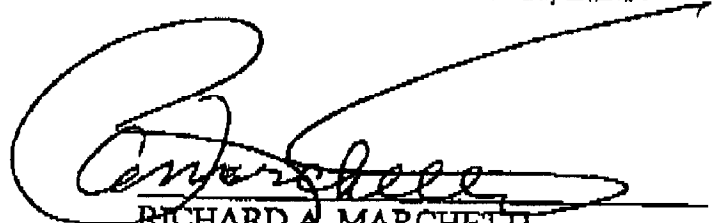


FORBES AND BOWMAN

*Morton G. Forbes by power*  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
COLUMBUS DIVISION

03 AUG 27 AM 11:33  
CLERK

FERRELLGAS PARTNERS, L.P.  
FERRELLGAS, L.P., and  
FERRELLGAS, INC.

Plaintiffs,

v.

HOMER BARROW, JANET WHITLEY,  
and BARROW ENERGIES, INC.

Defendants.

\*  
\* CIVIL ACTION NO. 4:03 - CV-107-2 (WDO)  
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**ANSWER AND DEFENSES OF DEFENDANT BARROW ENERGIES, INC. IN  
RESPONSE TO PLAINTIFFS' FIRST AMENDED COMPLAINT**

COMES NOW, BARROW ENERGIES INC., named as one of the Defendants in the above-captioned action, and files its Answer and Defenses in response to Plaintiffs' First Amended Complaint as follows:

**FIRST DEFENSE**

Some or all of the Plaintiffs' claims are barred by the doctrine of illegality.

**SECOND DEFENSE**

The Plaintiffs' claims are barred by the doctrines of waiver, estoppel, and abandonment.

**THIRD DEFENSE**

This Defendant pleads the defenses of lack of subject matter jurisdiction and improper venue.

**ANSWER**

As its Answer, this Defendant responds to the specific allegations of Plaintiffs' First Amended Complaint as follows:

1-3.

This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraphs 1, 2 and 3 of Plaintiffs' First Amended Complaint.

4.

On information and belief, this Defendant admits paragraph 4 of Plaintiffs' First Amended Complaint.

5-6.

This Defendant admits paragraphs 5 and 6 of Plaintiffs' First Amended Complaint.

7.

Responding to paragraph 7 of Plaintiffs' First Amended Complaint, this Defendant admits that the Court has personal jurisdiction over it.

8-9.

This Defendant denies paragraphs 8 and 9 of Plaintiffs' First Amended Complaint.

10.

Responding to paragraph 10 on information and belief, this Defendant admits that Homer Barrow was the sole shareholder of Barrow Propane Gas, Inc. from 1969 until December 1, 1999 and that the principal place of business of Barrow Propane Gas, Inc. was in Butler, Georgia.

11.

This Defendant denies paragraph 11 of Plaintiffs' First Amended Complaint.

12-13.

Responding to paragraphs 12 and 13 of Plaintiffs' First Amended Complaint on information and belief, this Defendant admits that on or about December 1, 1999, Homer Barrow executed a

document titled Stock Purchase Agreement. The terms of such document set out the various agreements between the parties and speak for themselves. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraphs 12 and 13 of Plaintiffs' First Amended Complaint.

14.

Responding to paragraph 14 of Plaintiffs' First Amended Complaint, this Defendant admits that Janet Whitley is Homer Barrow's daughter. Answering further, this Defendant admits that Janet Whitley was previously employed by Barrow Propane Gas, Inc. and worked in the office of Barrow Propane Gas, Inc..

15-16.

This Defendant denies as pled the allegations set forth in paragraphs 15 and 16 of Plaintiffs' First Amended Complaint.

17-18.

This Defendant denies paragraphs 17 and 18 of Plaintiffs' First Amended Complaint. On information and belief, this Defendant further denies that the purported agreements referenced in paragraphs 17 and 18 are enforceable under Georgia law.

19.

This Defendant is without knowledge or information sufficient to form a belief as to the truth of allegations set forth in paragraph 19 of Plaintiffs' First Amended Complaint.

20.

This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 20 of Plaintiffs' First Amended Complaint.

21.

This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 21 of Plaintiffs' First Amended Complaint.

22.

This Defendant denies paragraph 22 of Plaintiffs' First Amended Complaint.

23.

This Defendant denies paragraph 23 of Plaintiffs' First Amended Complaint.

24.

This Defendant denies paragraph 24 of Plaintiffs' First Amended Complaint.

25.

Responding to paragraph 25 of Plaintiffs' First Amended Complaint, this Defendant admits that Ferrellgas has applied to register the name Barrow Propane Gas before the United States Patent and Trademark Office. This Defendant further admits that the application serial number is as stated in paragraph 25 of Plaintiffs' First Amended Complaint. Answering further, this Defendant shows that the filing date before the United States Patent and Trademark Office was May 23, 2003, which was after the incorporation of Barrow Energies, Inc..

26.

This Defendant denies paragraph 26 of Plaintiffs' First Amended Complaint.

27-29.

This Defendant denies as pled the allegations set forth in paragraphs 27, 28, and 29 of Plaintiffs' First Amended Complaint.

30-31.

This Defendant denies paragraphs 30 and 31 of Plaintiffs' First Amended Complaint.

32.

Responding to paragraph 32 of Plaintiffs' First Amended Complaint, this Defendant admits that it has advertised in the Butler newspaper. This Defendant denies the remaining allegations contained in paragraph 32 of Plaintiffs' First Amended Complaint.

33.

Responding to paragraph 33 of Plaintiffs' First Amended Complaint, this Defendant admits that it has used its duly authorized and legal name, Barrow Energies, Inc., in connection with its business. This Defendant denies the remaining allegations contained in paragraph 33 of Plaintiffs' First Amended Complaint.

34.

Responding to paragraph 34 of Plaintiffs' First Amended Complaint, this Defendant admits that Barrow Energies, Inc. is incorporated in the State of Georgia and that Defendant Janet Whitley is its registered agent. This Defendant denies the remaining allegations contained in paragraph 34 of Plaintiffs' First Amended Complaint.

35.

This Defendant denies as pled the allegations set forth in paragraph 35 of Plaintiffs' First Amended Complaint. Answering further, this Defendant admits that Barrow Energies, Inc. has been issued a Liquefied Petroleum Gas license by the Georgia Safety Fire Commissioner.

36.

This Defendant denies paragraph 36 of Plaintiffs' First Amended Complaint.

37.

This Defendant denies paragraph 37 of Plaintiffs' First Amended Complaint.

38.

This Defendant denies as pled the allegations set forth in paragraph 38 of Plaintiffs' First Amended Complaint.

39.

This Defendant admits paragraph 39 of Plaintiffs' First Amended Complaint.

40.

This Defendant denies paragraph 40 of Plaintiffs' First Amended Complaint.

41.

Responding to paragraph 41 of Plaintiffs' First Amended Complaint, this Defendant adopts by reference its responses to paragraphs 1 through 40 of Plaintiffs' First Amended Complaint.

42.

Responding to paragraph 42 of Plaintiffs' First Amended Complaint, this Defendant admits that it has used its duly authorized and legal name, Barrow Energies, Inc., in connection with its business. This Defendant denies the remaining allegations contained in paragraph 42 of Plaintiffs' First Amended Complaint.

43-50.

This Defendant denies paragraphs 43, 44, 45, 46, 47, 48, 49, and 50 of Plaintiffs' First Amended Complaint.

51.

Responding to paragraph 51 of Plaintiffs' First Amended Complaint, this Defendant adopts by reference its responses to paragraphs 1 through 50 of Plaintiffs' First Amended Complaint.

52-55.

This Defendant denies paragraphs 52, 53, 54, and 55 of Plaintiffs' First Amended Complaint.

56.

Responding to paragraph 56 of Plaintiffs' First Amended Complaint, this Defendant adopts by reference its responses to paragraphs 1 through 55 of Plaintiffs' First Amended Complaint.

57-59.

This Defendant denies paragraphs 57, 58, and 59 of Plaintiffs' First Amended Complaint.

60.

Responding to paragraph 60 of Plaintiffs' First Amended Complaint, this Defendant adopts by reference its responses to paragraphs 1 through 59 of Plaintiffs' First Amended Complaint.

61.

This Defendant denies paragraph 61 of Plaintiffs' First Amended Complaint as pled.

62-64.

This Defendant denies paragraphs 62, 63, and 64 of Plaintiffs' First Amended Complaint.

65.

Responding to paragraph 65 of Plaintiffs' First Amended Complaint, this Defendant adopts by reference its responses to paragraphs 1 through 64 of Plaintiffs' First Amended Complaint.

66-70.

This Defendant denies paragraphs 66, 67, 68, 69, and 70 of Plaintiffs' First Amended Complaint.

71.

Responding to paragraph 71 of Plaintiffs' First Amended Complaint, this Defendant adopts by reference its responses to paragraphs 1 through 70 of Plaintiffs' First Amended Complaint.



72-75.

This Defendant denies paragraphs 72, 73, 74, and 75 of Plaintiffs' First Amended Complaint.

76-

Responding to paragraph 76 of Plaintiffs' First Amended Complaint, this Defendant adopts by reference its responses to paragraphs 1 through 75 of Plaintiffs' First Amended Complaint.

77-81.

This Defendant denies paragraphs 77, 78, 79, 80, and 81 of Plaintiffs' First Amended Complaint.

82.

This Defendant denies each and every other allegation contained in Plaintiffs' First Amended Complaint not specifically admitted or otherwise answered hereinabove.

WHEREFORE, having fully responded to Plaintiffs' Complaint and First Amended Complaint, this Defendant requests that it be discharged from this action with no liability; that this action be dismissed; that the costs of this action be cast upon the Plaintiffs; that it be given the judgment of this Court; that it be given a trial by jury, and that it be granted any and all other relief allowed by law.

This 27<sup>th</sup> day of August, 2003.

BUCHANAN & LAND, LLP

BY: 

Benjamin A. Land

Georgia Bar No. 432825

Jerry A. Buchanan

Georgia Bar No. 092200

Attorneys for Defendant Barrow Energies, Inc.

Post Office Box 2848  
Columbus, Georgia 31902  
(706) 323-2848

CERTIFICATE OF SERVICE

This is to certify that I have this date served the opposing party in the foregoing matter, with a copy of the above and foregoing by depositing in the United States Mail a copy of the same in a properly addressed envelope with adequate postage thereon to:

Morton G. Forbes  
P.O. Box 13929  
Savannah, GA 31416-0929

Richard A. Marchetti  
P.O. Box 2339  
Columbus, GA 31902-2339

Duke R. Groover  
P.O. Box 898  
Macon, Georgia 31202-0898

Charles W. Byrd  
P.O. Box 1770  
Perry, Georgia 31069

This 27<sup>th</sup> day of August, 2003.

BUCHANAN & LAND, LLP

BY: 

Benjamin A. Land  
Georgia Bar No. 432825  
Attorney for Defendant Barrow Energies, Inc.

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