

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

NATIONWIDE EQUIPMENT COMPANY,

Plaintiff,

v.

CASE NO.: 3:05-cv-236-J-32-HTS

MICHEL ALLEN; SUZETTE ALLEN;
PIONEER EQUIPMENT COMPANY, and
PIONEER EQUIPMENT NIGERIA, LTD.

Defendants.

AMENDED COMPLAINT

No responsive pleading having been filed, pursuant to Rule 15(a), Fed.R.Civ.P, Plaintiff amends its complaint to reflect that there are four individual defendants. The Plaintiff NATIONWIDE EQUIPMENT COMPANY (hereinafter “NATIONWIDE”), by and through its undersigned counsel, sues the Defendants MICHEL ALLEN, SUZETTE ALLEN, PIONEER EQUIPMENT COMPANY and PIONEER EQUIPMENT NIGERIA, LTD. (hereinafter “PIONEER”) and states as follows:

1. This Court has jurisdiction over this matter pursuant to the provisions of section 1331 of Title 28, United States Code. Count I of this complaint is a claim under the Racketeering Influenced Corrupt Organizations Act, 18 U.S.C. Section 1961 and Count II is a claim under the Lanham Trademark Act, 15 U.S.C. Section 1115 et seq. This court has supplemental jurisdiction over the remainder of the allegations in this complaint pursuant to Section 1367 of Title 28, United States Code.

THE PARTIES

2. At all times material hereto the Plaintiff, NATIONWIDE EQUIPMENT COMPANY was and still is a Florida corporation engaged in the domestic and international sales of heavy equipment including, but not limited to cranes, earth movers, tractors, asphalt plants, oxygen generating systems, scrapers, dozers, loaders, pavers, mixer trucks, motor graders, rollers, tractor trailers, backhoes, and other machinery as well as after sales support and new spare parts for such items sold, which has its principal place of business in Jacksonville, Florida. Most of the sales made by Plaintiff are financed by the EXIM Bank of the United States of America.

3. At all times material hereto and upon information and belief, the Defendants, MICHEL ALLEN and SUZETTE ALLEN were and still are an individuals who are married to each other and who are residing at 3121 Falconer Drive in Jacksonville, Florida and who are officers and directors of PIONEER EQUIPMENT COMPANY and PIONEER EQUIPMENT NIGERIA, LTD. Upon information and belief, SUZETTE ALLEN handles the bank accounts and runs the business in the United States while MICHEL ALLEN is overseas.

4. At and during all times mentioned herein the Defendant, PIONEER EQUIPMENT COMPANY was a Florida corporation which operates out of a contracted mail box service at 11111-70 San Jose Blvd, #325, in Jacksonville, Florida whose registered agent is Richard K. Jones, Moseley, Prichard, Parrish, Knight & Jones, 501 West Bay Street, Jacksonville, Florida 32202. PIONEER EQUIPMENT COMPANY has no known physical address other than the home of MICHEL ALLEN and SUZETTE ALLEN.

5. At and during all times mentioned herein the Defendant, PIONEER EQUIPMENT NIGERIA, LTD. was and still is an Nigerian corporation with its principal place of business in Lagos, Nigeria which is operated and controlled by MICHEL ALLEN and SUZETTE ALLEN

from Jacksonville, Florida.

6. Through February 4, 2005 MICHEL ALLEN was an employee and the Director of International Sales for the Plaintiff, NATIONWIDE EQUIPMENT COMPANY who, with regard to the international sales of heavy equipment, owed a fiduciary duty to act exclusively for the benefit of NATIONWIDE EQUIPMENT COMPANY, had a duty to obtain contracts for the sales of goods between purchasers of heavy equipment and his employer, and a duty to direct that the money reflecting the purchase price of the heavy machinery be deposited by wire transfer into the bank accounts of NATIONWIDE EQUIPMENT COMPANY. As an employee MICHEL ALLEN had a duty to refrain from any “deliberate omission, falsification, or fraudulent alteration of any document or record” including contracts for the sale of equipment. MICHEL ALLEN had an obligation to “maintain the confidentiality of the Companies’ customers, or client information” and to refrain from “aiding a competitor or any act that intends to inflict injury upon the Company.”

DESCRIPTION OF THE CONSPIRACY

7. In July of 2004, if not earlier, MICHEL ALLEN, in conjunction with SUZETTE ALLEN, and others, including, but not limited to Patrick Ahern of Houston, Texas, Mr. Moriba of Mali, Mr. Sama K. “Kalu” Ekpenyong, and others conspired to misappropriate the trade secrets, trademarks, and reputation of NWE to divert funds and contracts between NATIONWIDE EQUIPMENT COMPANY and its customers in Africa to their own benefit. Starting in July 2004 and continuing through the date of this complaint the Defendants directed customers and clients of NATIONWIDE EQUIPMENT COMPANY to divert the proceeds from sales which MICHEL ALLEN had arranged between NATIONWIDE EQUIPMENT COMPANY and its customers to bank accounts owned and operated by MICHEL ALLEN and

SUZETTE ALLEN, thereby depriving NATIONWIDE EQUIPMENT of the sales and converting the proceeds and profits from the sale of heavy equipment to their own use and personal gain.

8. On October 18, 2004 MICHEL ALLEN and SUZETTE ALLEN established a Florida Corporation which they called PIONEER EQUIPMENT COMPANY which had among its purposes the misappropriation of the trade secrets of NWE, passing itself off as a company related to NWE, and converting funds due to NATIONWIDE EQUIPMENT to the benefit of MICHEL ALLEN and SUZETTE ALLEN and their co-conspirators, converting contracts entered into between NATIONWIDE EQUIPMENT and its customers and diverting those contracts to MICHEL ALLEN, and defrauding both NATIONWIDE and its customers. The establishment of this enterprise has caused the Plaintiff to suffer irreparable damage to its reputation in the industry, has caused customers to lose confidence that funds being transferred upon direction of employees of the company will actually be received by the company and used for the purchase of their equipment and other injuries to the business which are irreparable.

9. As used in this complaint, the term embezzlement is the wilful taking or converting to one's own use, another's money or property which came into possession of the Defendants by reason of an employment or agency relationship. As used in this complaint the term "property" includes contracts for the sale of goods and merchandise, money in the form of wire transfers, and the profits from the sale of goods.

10. In carrying out the conspiracy, and as an example of how the conspiracy operated to harm the Plaintiff, MICHEL ALLEN, while an employee of the Plaintiff, made quotations and/or secured contracts between NATIONWIDE EQUIPMENT and its ongoing customers accounts to sell them heavy equipment and other related material.

11. Thereafter the Defendant MICHEL ALLEN, doing business under the name

PIONEER EQUIPMENT COMPANY, a company which did not then exist directed the NWE customer to deliver the funds for the purchase of the compacter and related equipment by international wire transfer to PIONEER EQUIPMENT COMPANY instead of to NATIONWIDE EQUIPMENT COMPANY. Thereafter, MICHEL ALLEN purchased the same or a similar equipment which NWE had agreed to sell the customer and delivered that equipment to the customer, converting the profits from the sale to his own use.

12. For example, on or about December 29, 2004 the Plaintiff, NATIONWIDE entered into a written contract with one of its customer in Douala, Cameroon Republic, Africa to sell them heavy equipment and other related material, including, among other things, two Caterpillar 140G Motor Graders for a contact price, including other equipment, for \$294,500. The funds for payment of the contract price were to be sent to NATIONWIDE EQUIPMENT COMPANY by international wire transfer.

13. Thereafter, on or about January 31, 2005, the Defendant MICHEL ALLEN, while still an employee of NATIONWIDE EQUIPMENT COMPANY created an invoice on a form entitled "Invoice, Pioneer Equipment Company" and instructed the buyer to wire transfer in international commerce a portion of the funds due for payment for the equipment in the amount of \$207,650 into Account Number 2000025782673 at Wachovia Bank N.A. in Jacksonville, Florida which is held in the name of PIONEER EQUIPMENT COMPANY.

14. Thereafter, in accordance with the instructions of MICHEL ALLEN, the purchaser wire transferred some sum, believed to be \$207,650 into the Wachovia Bank N.A. account of PIONEER EQUIPMENT COMPANY account as instructed.

15. A list of those contracts which the Plaintiff has located to date, which were

converted by the Defendants to their own use, utilizing wire transfers, emails, and other electronics means of communication include the following:

NWE CONTRACT	PIONEER EQUIPMENT CONTRACT
<p>September 3, 2004 Quotation between NWE and customer in Nigeria for 1 unit used 1997/1998 Bomag BW213PDB-2 Padfoot Compactor, s/n 1094000200258U for \$43,000.</p>	<p>September 6, 2004 Pioneer purchases s/n 1094000200258U from Piedmont Equipment Exchange for \$36,500 after NWE had agreed to sell the exact same unit to a customer in Nigeria, thereby depriving NWE of the sale.</p>
<p>December 21, 2004 Contract between NWE and a customer for the purchase of 1 new unit 2005 Kori Swamp Buggy, 1 unit Caterpillar 950 F Wheel Loader, 1 unit Grove RT745Crane, Caterpillar 3208 Engine at a total contract price of \$656,500.</p>	<p>Upon information and belief Pioneer Equipment Company and a customer entered into a contract for the sale of a portion of the same or substantially the same equipment for \$515,000.000.</p>
<p>December 30, 2004 Quotations between NWE and Nigerian customer for the purchase of 1 unit used Mack Tractor truck with Etnyre Asphalt Distributor Tanker at a contract price of \$35,000.</p>	<p>January 11, 2005 Contract between Pioneer Equipment Company and the same Nigerian customer for the sale of the same or substantially the same equipment for \$35,000</p>
<p>December 30, 2004 Quotation between NWE and a customer for the purchase of 1 unit used 1993/1994 Freightliner Truck at a contract price of \$13,500.00.</p>	<p>January 23, 2005 Contract between Pioneer Equipment Company and the same customer for the sale of the same or substantially the same equipment for \$13,500.00.</p>
<p>January 21, 2005 Contract between NWE and a Cameroon Republic customer for the purchase of 2 units used Caterpillar 140G Motor Graders, . Equipped with new tires, Clean & Painted, Serviced, 1 unit used Caterpillar 966C Wheel Loader-Equipped, 1 used Caterpillar D7G Dozer-Equipped with: O/ROPS, S/Tilt Blade, Rear Ripper, Clean & Painted, Serviced at a contract price of \$294,500.</p>	<p>January 31, 2005 Pioneer Equipment Company and the same customer for the sale of a portion of (4 of 6 pieces of equipment, buy older and more worn) the same equipment for \$207,650.00.</p>

<p>January 22, 2005 Quotation between NWE and a Nigerian customer for the purchase of 1 unit 1998 Caterpillar 12 G Motor Grader, 1 unit 1987 Caterpillar 936F Wheel Loader, 1 unit 1980 Caterpillar 938F Wheel Loader at a contract price of \$324,500.00.</p>	<p>Upon information and belief Pioneer Equipment Company and the same customer entered into a contract for the same or substantially the same equipment.</p>
<p>January 25, 2005 Quotation between NWE and a Nigerian customer for the purchase of 1 unit used 1987/1988 Caterpillar 140G Motor Grader, 1 unit used 1996/1997 Bombag BWW213DVibrating Compactor 11 ton, 1 unit used 1993/1994 Caterpillar 950F Wheel Loader, 2 units used 1987/1988 Mack Dump Trucks at a contract price of \$253,000.00</p>	<p>Upon information and belief Pioneer Equipment Company and the same customer entered into a contract for the sale of the same or substantially the same equipment for \$253,000.00.</p>
<p>January 27, 2005 Quotation between NWE and Port Harcourt, Nigerian customer for the purchase of 10 units 1994-1996 Mack CH613, 1 unit 1994 Grove TMS750B, 1 unit 1992 Grove RT745 and 1 unit 1993 Grove RT990 at a contract price of \$747,000 not including shipping costs.</p>	<p>Upon information and belief Pioneer Equipment Company and the same customer in Nigeria entered into a contract for the sale of the same or substantially the same equipment.</p>
<p>January 31, 2005 Quotation between NWE and Cameroun Republic customer for the purchase of 4 units 1998 Caterpillar 12H Graders, 2 units 1998 Caterpillar CS583C Single Drum Compactor, 1 unit 1998 Caterpillar PS500 9- Wheel Pneumatic Roller, 1 unit 1998 Caterpillar D7R Bulldozer, 1 unit 1998 Caterpillar D6R Bulldozer at a contract price of 1,063,500.00.</p>	<p>Upon information and belief Pioneer Equipment Company and the same customer entered into a contract for the sale of the same or substantially the same equipment for \$1,169,500.00.</p>

January 28, 2005 Contract between NWE and a Nigerian customer for the purchase of 1 unit used 1992 Grove RT745 Crane, 1 unit used Caterpillar 375L Excavator, 1 unit used Caterpillar 988B Wheel Loader, 2 units used Caterpillar D9N Dozers, 1 unit used Caterpillar D6R Dozer at a contract price of \$985,558.	Upon information and belief Pioneer Equipment Company and the same customer entered into a contract for the sale of the same or substantially the same equipment for \$970,588.24.
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16. In furtherance of the conspiracy, on or about October 22, 2004 MICHEL ALLEN solicited a Nigerian attorney who had represented NWE in the past, along with one or more other unnamed individuals in Nigeria, to utilize trade secrets, customer lists and supplier lists of NATIONWIDE EQUIPMENT COMPANY to establish an office in Nigeria which was incorporated under the name PIONEER EQUIPMENT NIGERIA LTD. for the purpose of passing themselves off as part of or related to NATIONWIDE EQUIPMENT COMPANY, and diverting sales of NATIONWIDE EQUIPMENT COMPANY equipment in that country to MICHEL ALLEN, SUZETTE ALLEN, and companies they controlled including PIONEER EQUIPMENT COMPANY.

17. As part of his duties, MICHEL ALLEN was provided with copies of Confidentiality and Non-Circumvention Agreements between NWE and a number of its suppliers. MICHEL ALLEN, doing business as PIONEER EQUIPMENT COMPANY, copied the agreements, in most case word for word, and sought out methods and means to circumvent the non-circumvention agreements in order to convert to his own use the contractual rights held by NWE.

18. On or about December 9 and 10, 2004. MICHEL ALLEN while on a NWE sponsored trip to Algeria for a GKS (Gold Key Service) program conspired to pass off AHERN INDUSTRIES and PIONEER EQUIPMENT COMPANY as companies which were affiliated

with NWE, subsidiaries of NWE, or otherwise part of the “NWE family.” See email from Fazia Gomoura, Trade Specialist for the United States Embassy in Algiers, Algeria attached to the Sworn Statements of Edward Kostenski and Dennis Roquand describing one such meeting. The meetings were conducted at the behest of, and at the expense of NWE and neither NWE nor the U.S. Embassy in Algeria gave Mr. ALLEN permission to represent other companies to customers in Algeria.

19. Sometime between July 2004 and February 2005, the Defendant, MICHEL ALLEN, utilized confidential sales and account information, customer lists, supplier lists, and other trade secrets to create various documents including a “Pioneer Revenue Projections-2005,” a “Nigeria Marketing Plan”, a “Pioneer 2005 Trip 1: Nigeria Target List and an Algeria List.”

20. Upon information and belief, on or about February 7, 2005 the Defendants, MICHEL ALLEN, SUZETTE ALLEN, and PIONEER EQUIPMENT COMPANY established a new bank account at the Bank of America in Jacksonville, Florida in order to avoid attachment of their accounts at Wachovia Bank N.A. and IronStone Bank in Jacksonville, Florida and in order to continue converting funds due to NATIONWIDE EQUIPMENT COMPANY to their own use.

21. The Plaintiff has hired the undersigned law firm and has agreed to pay them a reasonable fee for their services.

COUNT I
WIRE FRAUD PURSUANT TO 18 U.S.C. SECTION 1343/FEDERAL RICO

The Plaintiff realleges and incorporates herein the statements contained in paragraphs 1 through 21 and further alleges as follows:

22. Under the provisions of Section 1343 of Title 18, United States Code, it is a crime to devise or intend to devise “any scheme or artifice to defraud, or for obtaining money or

property by means of false or fraudulent pretenses” by transmitting communications by wire in interstate or foreign commerce including emails, telefaxes, and telephone transmissions for the purpose of executing said scheme.

23. The Defendants, MICHEL ALLEN, SUZETTE ALLEN, and various unknown individuals in Africa, doing business under the name PIONEER EQUIPMENT COMPANY conspired through false or fraudulent pretenses, and through the creation of fraudulent invoices and sales contracts, to cause customers of NATIONWIDE EQUIPMENT COMPANY to wire transfer in international commerce funds intentionally due to NATIONWIDE EQUIPMENT COMPANY to the Defendants.

24. The Defendants have received and derived income from a consistent pattern of wire fraud as set forth in paragraphs 7 through 21 and have used that income in the establishment and operation of PIONEER EQUIPMENT COMPANY and PIONEER EQUIPMENT NIGERIA, LTD. which are involved in the sale of goods in foreign commerce. They continue to hold an interest in and control PIONEER EQUIPMENT COMPANY and PIONEER EQUIPMENT NIGERIA, LTD. and participate in the conduct of the enterprises’ affairs.

25. The Plaintiff has been damaged by the operation of the enterprise and by the conversion of funds due it to the enterprise.

WHEREFORE the Plaintiff demands judgment against the Defendants as follows:

1. Three times the amount of damages which they have suffered as a result of the wire fraud, plus reasonable attorneys fees and costs;

2. Pre-judgment attachment of the funds held in accounts in Wachovia Bank N.A., IronStone Bank, and Bank of America listed in the name of PIONEER EQUIPMENT COMPANY and/or PIONEER INVESTMENTS, said funds to be held in escrow until the final

outcome of a trial on the merits is heard.

3. A temporary restraining order, preliminary injunction, and injunction prohibiting the Defendants from using customer and supplier lists, ongoing sales contracts, sales information, ongoing sales contracts and other proprietary trade secrets obtained from NATIONWIDE in the operation of a business entity selling heavy equipment into Africa, prohibiting the Defendants directly or through agents and co-conspirators from contacting customers of NATIONWIDE EQUIPMENT COMPANY concerning business opportunities and ongoing contracts for the sale of goods for which MICHEL ALLEN was paid by NATIONWIDE while a sales director with that company, and prohibiting the Defendants from directing customers of NATIONWIDE to wire transfer monies to the Defendants or any entity in which they have an interest, including, but not limited to PIONEER EQUIPMENT COMPANY.

4. Such other and further relief as is just and proper.

COUNT II
FALSE AND MISLEADING USE OF TRADEMARKS
AND TRADE DRESS

The Plaintiff realleges and incorporates herein the statements contained in paragraphs 1 through 21 and further alleges as follows:

26. The Plaintiff is the owner of the trademark for Nationwide Equipment Company and has spent considerable amounts of money promoting and developing recognition of its name and reputation in markets in Africa. In the years 2003 and 2004 the Plaintiff spent in excess of \$250,000 per year developing its brand name in Nigeria alone.

27. The Defendants, MICHEL ALLEN, SUZETTE ALLEN, PIONEER EQUIPMENT COMPANY, and PIONEER EQUIPMENT NIGERIA, LTD. have, in connection with the sale of goods and services originating in the United States, to be delivered to export

customers overseas, used the name and reputation of NATIONWIDE EQUIPMENT COMPANY to promote their own business, and the business of Ahern Industries, by stating that they are independent agents for, companies related to, or subsidiaries of NATIONWIDE EQUIPMENT, for the purpose of trading on the good name of NATIONWIDE EQUIPMENT. The representations are false or misleading and are likely to cause confusion, or to cause mistake in the minds of NWE's customers, and to deceive those customers as to the affiliation, connection, or association of the Defendants with NWE. The misrepresentations of fact are designed to cause the customers of NWE to believe that NWE approves of the goods, services, and commercial activities of the Defendants.

28. Further, in commercial advertising and promotions the Defendants have copied the advertisements and brochures of NWE, and simply pasted the name of PIONEER EQUIPMENT COMPANY over the place previously occupied by the name of NATIONWIDE EQUIPMENT COMPANY.

29. The Defendants have wilfully intended to trade on the reputation of NWE and have caused, and are continuing to cause the Plaintiff irreparable injury in violation of the provisions of Section 1125 of Title 15, United States Code. The Plaintiffs are entitled to injunctive relief, and the remedies set forth in Sections 1117(a) and 1118 of Title 18, United States Code.

WHEREFORE the Plaintiff demands judgment against the Defendants as follows:

1. Three times the amount of profits, or damages suffered by the Plaintiff, whichever is greater, plus reasonable attorneys fees and costs;
2. In the alternative, statutory damages in the amount of \$1,000,000 for the wilful misuse of the Plaintiff's name and registered trademark;

3. Injunctive relief; and
4. Such other and further relief as is just and proper.

COUNT III
CIVIL REMEDIES FOR CRIMINAL PRACTICES
CHAPTER 772 FLORIDA STATUTES
CIVIL REMEDY FOR THEFT OF PROPERTY---SECTION 772.11

The Plaintiff realleges and incorporates herein the statements contained in paragraphs 1 through 21 and further alleges as follows:

32. Florida Statutes Section, 772.11 provides civil remedies for theft if any person proves by clear and convincing evidence that he or she has been injured by any violation of the provisions 812.012-812-037 had a cause of action for threefold the actual damages sustained, reasonable attorney's fees and court costs in the trial and appellate courts.

33. The conversion of wire transfers as described herein constitutes theft and are prohibited activities and a predicate acts establishing a private cause of action under the aforementioned statute.

34. Contemporaneously with the filing of this Complaint the Plaintiff has or will demand to the Defendants the return of all property obtained through the activities described above. Thirty days after the issuance of the demand, if the Defendants have not returned the property, they will be liable for the remedies set forth below.

WHEREFORE the Plaintiff demands judgment against the Defendants as follows:

1. Three times the amount of damages which they have suffered as a result of the wire fraud, plus reasonable attorneys fees and costs;

2. Pre-judgment attachment of the funds held in accounts in Wachovia Bank N.A., IronStone Bank, and Bank of America listed in the name of PIONEER EQUIPMENT

COMPANY to be held in escrow until the final outcome of a trial on the merits is heard.

3. A temporary restraining order, preliminary injunction, and injunction prohibiting the Defendants from using customer and supplier lists, sales information, ongoing sales contracts and other trade secrets obtained from NATIONWIDE in the operation of a business entity selling heavy equipment into Africa , prohibiting the Defendants directly or through agents and co-conspirators from contacting customers of NATIONWIDE EQUIPMENT COMPANY concerning business opportunities and contracts for the sale of goods for which MICHEL ALLEN was paid by NATIONWIDE while a salesman with that company, and prohibiting the Defendants from directing customers of NATIONWIDE to wire transfer monies to the Defendants or any entity in which they have an interest, including, but not limited to PIONEER EQUIPMENT COMPANY.

4. Such other and further relief as is just and proper.

COUNT IV
CIVIL REMEDY FOR CRIMINAL ACTS
CHAPTER 812 FLORIDA STATUTES, SECTION 812.035
REGARDING THEFT OR EMBEZZLEMENT OF TRADE SECRETS
CHAPTER 812 FLORIDA STATUTES SECTION 812.081

The Plaintiff realleges and incorporates herein the statements contained in paragraphs 1 through 21 and further alleges as follows:

35. Embezzling trade secrets is a violation the Florida Statutes Section 812.081(2) and is punishable as a third degree felony. Specifically the statute provides that “any person who with intent to appropriate a trade secret to his or her own use or embezzles an article representing a trade secret or without authority makes or caused to be made a copy of an article representing a trade secret is in violation of this Statute.”

36. Trade secrets are, but are not limited to, the compilation of information which is

for use, or is used in the operation of a business and provides the business an advantage or an opportunity to obtain an advantage over those who do not know or use the secrets. Trade secrets include, but are not limited to, commercial information such as processes, procedures, and lists of suppliers and customers.

37. NWE maintains certain trade secrets including, but not limited to lists of suppliers, lists of customers, knowledge of upcoming contracts and the terms and conditions of negotiations for the sale of heavy equipment. These trade secrets are valuable and are for use in the business of NWE and provide an advantage to the company in conducting business in these markets. In the course of his employment, MICHEL ALLEN was provided with access to trade secrets and engaged in contract negotiations on behalf of NATIONWIDE EQUIPMENT COMPANY which made him privy to the offers being made and received, the terms of sale, and the particular requirements of each customer, facts which if known by a competitor would put them at a competitive advantage.

38. MICHEL ALLEN and SUZETTE ALLEN individually and doing business as PIONEER EQUIPMENT COMPANY and PIONEER EQUIPMENT NIGERIA, LTD. misappropriated trade secrets including but not limited lists of suppliers, lists of customers, knowledge of upcoming contracts and the stage of negotiations for the sale of heavy equipment. The Defendants have used these trade secrets, and continue to use there trade secrets to knowingly obtain title to the plaintiff's property, namely funds from various sales agreements, quotations, and contracts by means of misrepresentation of fact, with the intent to defraud his employer and its customers by not depositing the funds into the Plaintiff's account but instead diverting those funds to their own business account.

39. Florida Statutes Section 812.035 provides private persons a right to a civil remedy

for violation of Florida Statutes Section 812.081. Specifically, the statute provides that any circuit court may order any defendant to divest himself or herself of any interest in any enterprise, impose reasonable restrictions upon the future activities or investments of any defendant from engaging in the same type of endeavor as the enterprise in which he or she was engaged in the violation of the aforementioned statute, order the forfeiture of the charter of a corporation organized under the laws of the state and for the prevention of future criminal activity the corporation be dissolved or the certificate revoked.

40. The Plaintiff has suffered irreparable injury in the past and damages and irreparable injuries will continue to accrue into the future which cannot be cured through the payment of money damages.

41. The Plaintiff is entitled to money damages in lost profits, loss of business opportunity, damage to reputation etc. as well as injunctive relief.

WHEREFORE the Plaintiff, Nationwide Equipment demands:

1. Damages from the Defendants for the conversion of the proceeds from the sales of goods, lost profits, and other damages.

2. Pre-judgment attachment of the funds held in accounts in Wachovia Bank N.A., IronStone Bank, and Bank of America listed in the name of PIONEER EQUIPMENT COMPANY to be held in escrow until the final outcome of a trial on the merits is heard.

3. A temporary restraining order, preliminary injunction, and injunction prohibiting the Defendants from using customer and supplier lists, sales information, quotations and contracts for ongoing sales and other trade secrets obtained from NATIONWIDE in the operation of a business entity selling heavy equipment into Africa and prohibiting the Defendants directly or through agents and co-conspirators from contacting customers of NATIONWIDE EQUIPMENT

COMPANY concerning business opportunities and contracts for the sale of goods for which MICHEL ALLEN was paid by NATIONWIDE while a salesman with that company, and prohibiting the Defendants from directing customers of NATIONWIDE to wire transfer monies to the Defendants or any entity in which they have an interest, including, but not limited to PIONEER EQUIPMENT COMPANY.

4. An order requiring the Defendants to divest themselves of any interest in PIONEER EQUIPMENT COMPANY and of any enterprise which engages in sales to customer or former customers of NATIONWIDE EQUIPMENT COMPANY in Africa and to restrict the Defendants from engaging in future activities or investments involving sales of heavy equipment to Africa and from engaging in the same type of endeavor as the enterprise in which he or she was engaged in the violation of the aforementioned statute, order the forfeiture of the charter of PIONEER EQUIPMENT COMPANY, close the account in Wachovia Bank, IronStone Bank, and Bank of America in the name of that corporation

5. For such other and further relief as is just and proper.

COUNT V

GROSS FRAUD PURSUANT TO FLORIDA STATUTE 817.29

The Plaintiff realleges and incorporates herein the statements contained in paragraphs 1 through 25 and further alleges as follows:

42. A person who engages in gross fraud is in violation of Florida Statutes Section 817.29 which is punishable as a third degree felony. *State v. Peterson*. 102 So.2d 293 (Fla. 2d DCA 1966). Cheating or gross fraud is knowingly and designedly, by false pretenses, obtaining from any person or persons money, foods, wares or merchandise with the intent to cheat for defraud said person or persons of the same.

43. MICHEL ALLEN knowingly obtained from the plaintiff, NATIONWIDE EQUIPMENT COMPANY, by false pretenses, their funds from business contract transactions with the intent to defraud the plaintiff. As used in this complaint, the term false pretenses is defined as knowingly obtaining title to another's personal property by means of misrepresentation of fact with intent to defraud.

44. As a direct and proximate result of Michel Allen's gross fraud, the Plaintiff has suffered damages, including damage to its reputation in the industry.

WHEREFOR the Plaintiff demands damages and injunctive relief, and such other relief as is appropriate against the Defendants.

COUNT VI

BREACH OF UNIFORM TRADE SECRETS ACT (UTSA) **CHAPTER 688, FLORIDA STATUTES**

The Plaintiff realleges and incorporates herein the statements contained in paragraphs 1 through 25 and further alleges as follows:

45. It is a violation of the Uniform Trade Secrets Act violation, Florida Statutes Chapter 688, to acquire and use trade secrets acquired by "improper means" including but not limited to by theft, misrepresentation and in violation of duty to maintain secrecy. After the acquisition of the trade secret by "improper means", the person knows or has reason to know that the trade secret was acquired by improper means.

46. A "trade secret" is information, including but not limited to any compilation, program, method, technique and process that derives independent economic value, actual or potential, from not being generally known to , and not being readily ascertainable by the public from which other persons can obtain economic value through its disclosure or use.

47. The Plaintiff, NATIONWIDE, is in possession of numerous trade secrets concerning trade into Africa which provides it with a competitive advantage including, but not limited to customer lists, supplier lists, knowledge of upcoming contracts and business opportunities, knowledge of offers for the purchase of heavy equipment and the stage of negotiations on those offers, and other information which it actively maintains secret both within and outside the company. MICHEL ALLEN, in his position as a Director of International Sales with NATIONWIDE was privy to, and used these trade secrets in promoting the sale of NATIONWIDE'S products in international commerce..

48. MICHEL ALLEN had a duty to maintain the secrecy of those trade secrets and use them solely for the benefit of his employer while employed by NATIONWIDE. After his departure from the company he had a further obligation to maintain the confidentiality of those trade secrets as well as ongoing sales contracts and to refrain from using them for his own purposes.

49. While still and employee of NATIONWIDE, and after his departure from the employment of NATIONWIDE, MICHEL ALLEN and SUZETTE ALLEN, and PIONEER EQUIPMENT COMPANY converted the trade secrets of NATIONWIDE EQUIPMENT to their own use and used those trade secrets, including but not limited to their lists of suppliers, lists of customers, on going sales contracts knowledge of upcoming contracts and negotiations for the sale of equipment to enter into contracts under the name of their corporation, PIONEER EQUIPMENT COMPANY. The Defendant acquired these trade secrets, that were only available to him as an employee of the plaintiff, to obtain independent economic value by their use in his business transactions acting as PIONEER EQUIPMENT COMPANY.

50. Florida Statute 688.003(1) provides injunctive relief for actual or threatened

misappropriation of trade secrets. An injunction may be issued to enjoin the defendant from using the misappropriated trade secrets in order to eliminate commercial advantage.

51. Florida Statute 688.004(1) entitles a complainant to recover damages for misappropriation. Damages can include both actual loss caused by misappropriation and the unjust enrichment caused by misappropriation.

52. The Plaintiff has suffered and will continue to suffer irreparable injury and damages resulting from the misuse of the trade secrets of the Plaintiff and will suffer damage to its reputation in the industry.

WHEREFOR the Plaintiff demands damages and injunctive relief, and such other relief as is appropriate against the Defendants.

COUNT VII
TORTIOUS INTERFERENCE WITH A CONTRACTUAL RELATIONSHIP

The Plaintiff realleges and incorporates herein the statements contained in paragraphs 1 through 21 and further alleges as follows:

53. The Defendants had a duty to refrain from interfering in the completion of contracts entered into between the Plaintiff and its customers, and from interfering in contracts which were in negotiations between the Plaintiff and its customers.

54. The Defendants breached those duties by directing the customers to divert funds originally destined for the sale of products by NATIONWIDE to them to other companies including the accounts of PIONEER EQUIPMENT COMPANY.

55. As a direct result of the breach of the duties set forth above, the Plaintiff has suffered damages and injury to its reputation in the industry.

WHEREFOR the Plaintiff demands damages and injunctive relief, and such other relief

as is appropriate against the Defendants.

COUNT VIII
BREACH OF FIDUCIARY DUTY AND CONSTRUCTIVE TRUST

The Plaintiff realleges and incorporates herein the statements contained in paragraphs 1 through 25 and further alleges as follows:

56. As an employee of NATIONWIDE the Defendant, MICHEL ALLEN, was in a position of trust and had a fiduciary duty to handle the accounts, funds, contracts, and money on behalf of the Plaintiff with the utmost in good faith and honesty.

57. By virtue of their actions the Defendants have come into possession of funds for the purchase of heavy equipment under contracts which entered into between the Plaintiff and its customers, or which the result of negotiations between the Plaintiff and its customers which the Defendant, MICHEL ALLEN, either conducted as an employee of the Plaintiff, or became aware of in his employment relationship.

58. The Defendants have received from the Plaintiff's customers funds for the purchase of heavy equipment which they knew, or should have known were due to NATIONWIDE EQUIPMENT COMPANY and they have deposited those funds in various account in Wachovia Bank, IronStone Bank, and Bank of America in Jacksonville, Florida.

59. The Defendants hold those funds as constructive trustees for the use and benefit of the Plaintiff and any use of those funds except for the benefit of the Plaintiff and its customers constitutes a breach of fiduciary duty.

60. As a direct and proximate result of the Defendant's breach of fiduciary duty the Plaintiff has suffered and will continue to suffer damages into the future and injury to its reputation in the industry.

WHEREFOR the Plaintiff demands damages and injunctive relief, and such other relief as is appropriate against the Defendants.

COUNT IX
MISAPPROPRIATION OF TRADE SECRETS
AND UNFAIR COMPETITION

The Plaintiff realleges and incorporates herein the statements contained in paragraphs 1 through 21 and further alleges as follows:

61. The elements of a cause of action for trade secret misappropriation are (1) the existence of a trade secret used by the plaintiff in its business, (2) a confidential relationship between the parties, (3) disclosures concerning the trade secret made in confidence by the plaintiff to the defendant, and (4) unauthorized use of the disclosures by the defendant.

62. The use of misappropriated trade secrets in the operation of a business or business enterprise constitutes unfair competition.

63. The Defendants have misappropriated the Plaintiff's trade secrets causing the Plaintiff damages, loss of business and business opportunities, and loss of reputation.

WHEREFOR the Plaintiff demands damages and injunctive relief, and such other relief as is appropriate against the Defendants.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the forgoing document has been electronically filed by the undersigned with the Clerk of the Court by using the CM/ECF system; and a notice of electronic filing will be forwarded via email by the Clerk to all parties; and a copy of the foregoing will be forwarded via email to David Ferebee, Esq. at ferebeelaw@bellsouth.net and by hand-delivery to David Ferebee, Esq., P.O. Box 1796, (corner of Monroe Street and 9th St) Jacksonville, FL 32202 this 16th day of March, 2005.

Respectfully submitted,

SULLIVAN & COMPANY

/s/ G.J. Sullivan, Jr.

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