

**ORIGINAL**

IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
OCALA DIVISION

GARY L. LANE, )  
)  
Plaintiff, )  
)  
vs. )  
)  
SUMTER ELECTRIC )  
COOPERATIVE, INC., a )  
Florida corporation, )  
)  
Defendant. )  
\_\_\_\_\_ )

Civil Action No. 5:03CV42-OC-10GRJ

FILED US DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
OCALA, FLORIDA

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FILED



**ANSWER**

Defendant Sumter Electric Cooperative, Inc. (“Defendant” or “Sumter Electric”) answers the Verified Amended Complaint in the captioned case as follows:

**FIRST DEFENSE**

Some or all of the Complaint fails to state a claim upon which relief can be granted.

**SECOND DEFENSE**

To the extent that Plaintiff’s claims are based on events alleged to have occurred more than 300 days before the filing of his charge of discrimination, such claims are time-barred.

**THIRD DEFENSE**

Some or all of Plaintiff’s claims may be barred by his failure to comply with the procedural prerequisites to suit.

FOURTH DEFENSE

Plaintiff is not disabled within the meaning of Title I of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq. (“ADA”) or the Florida Civil Rights Act of 1992, § 760.01 et seq. (“FCRA”).

FIFTH DEFENSE

Any claim for compensatory and punitive damages under the ADA is subject to, and limited by, the provisions of 42 U.S.C. § 1981 (a)(b)(3).

SIXTH DEFENSE

Plaintiff is not “qualified” within the meaning of the ADA or the FCRA.

SEVENTH DEFENSE

Plaintiff exceeded the leave provided by the Family and Medical Leave Act of 1993, 29 U.S.C. § 2601 et seq. (“FMLA”), and is not protected by that Act.

EIGHTH DEFENSE

Defendant is not subject to a claim for punitive damages because any allegedly discriminatory decisions would have been contrary to Sumter Electric’s good faith efforts to comply with the ADA, FMLA, and FCRA.

NINTH DEFENSE

To the extent that Plaintiff seeks to assert claims not reasonably related to the allegations set forth in his administrative charge, such claims are barred.

TENTH DEFENSE

Plaintiff has failed to mitigate his alleged damages, the entitlement to which is expressly denied.

ELEVENTH DEFENSE

Plaintiff's continued employment by Sumter Electric might have created a direct threat to the health and safety of himself or others.

TWELFTH DEFENSE

Some or all of Plaintiff's claims may be barred by the applicable statute(s) of limitations.

THIRTEENTH DEFENSE

The employment actions taken with respect to Plaintiff were taken for legitimate, nondiscriminatory reasons.

FOURTEENTH DEFENSE

Plaintiff failed to request accommodation within the meaning of the ADA and the FCRA, nor would any proposed accommodation proffered by Plaintiff have been reasonable under the circumstances.

FIFTEENTH DEFENSE

Any proposed accommodation proffered by Plaintiff would not have been possible without creating undue hardship on Defendant.

SIXTEENTH DEFENSE

Some or all of Plaintiff's claims are barred by virtue of the fact that Plaintiff was covered by a collective bargaining agreement prohibiting discharge without just cause, and Plaintiff's collective bargaining representative, the International Brotherhood of Electrical Workers (Local 108), chose not to pursue, and chose to abandon, Plaintiff's grievance alleging unjust termination.

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SEVENTEENTH DEFENSE

In response to the separately numbered paragraphs of the Complaint, Defendant answers further as follows:

1.

Defendant admits only that Plaintiff purports to bring this action under the ADA, the FCRA, and the FMLA. Defendant denies that it has committed any violation of law, and further denies the remaining allegations in Paragraph 1 of the Complaint.

2.

Defendant admits that jurisdiction is proper in this Court.

3.

Defendant admits that jurisdiction is proper in this Court.

4.

Defendant denies the allegations in Paragraph 4 of the Complaint.

5.

Defendant admits only that Plaintiff filed a charge alleging disability discrimination that purports to have been filed on or around December 14, 2001. Defendant denies the remaining allegations in Paragraph 5 of the Complaint.

6.

Defendant admits only that the Equal Employment Opportunity Commission ("EEOC") issued a Right to Sue letter dated November 5, 2002. Defendant denies the remaining allegations in Paragraph 6 of the Complaint.

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7.

Defendant is without sufficient knowledge or information to admit or deny if and when Plaintiff received the Right to Sue letter, and therefore denies the allegations in Paragraph 7 of the Complaint.

8.

Based on information and belief, Defendant admits the allegations in Paragraph 8 of the Complaint.

9.

Defendant is without sufficient knowledge or information to admit or deny the allegations in Paragraph 9 of the Complaint, and therefore denies those allegations.

10.

Defendant denies the allegations in Paragraph 10 of the Complaint.

11.

The allegations in Paragraph 11 of the Complaint improperly call for a legal conclusion. To the extent a response is required, Defendant denies the allegations in Paragraph 11 of the Complaint.

12.

The allegations in Paragraph 12 of the Complaint improperly call for a legal conclusion. To the extent a response is required, Defendant denies the allegations in Paragraph 12 of the Complaint.

13.

Defendant admits the allegations in Paragraph 13 of the Complaint.

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14.

The allegations in Paragraph 14 of the Complaint improperly call for a legal conclusion. To the extent a response is required, Defendant denies the allegations in Paragraph 14 of the Complaint.

15.

The allegations in Paragraph 15 of the Complaint improperly call for a legal conclusion. To the extent a response is required, Defendant admits the allegations in Paragraph 15 of the Complaint.

16.

The allegations in Paragraph 16 of the Complaint improperly call for a legal conclusion. To the extent a response is required, Defendant admits the allegations in Paragraph 16 of the Complaint.

17.

Defendant admits only that it hired Plaintiff for the first time on or about November 1, 1982. Defendant denies the remaining allegations in Paragraph 17 of the Complaint.

18.

Defendant admits the allegations in Paragraph 18 of the Complaint.

19.

Defendant is without sufficient knowledge or information to admit or deny the allegations in Paragraph 19 of the Complaint, and therefore denies those allegations.

20.

Defendant admits only that it sent Plaintiff a final warning letter dated December 12, 2000, and avers that such warning, which cites Plaintiff for numerous and repeated safety

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violations and performance problems, speaks for itself and is the best evidence of its contents.

Defendant denies the remaining allegations in Paragraph 20 of the Complaint, including the false allegation that the warning “berated” Plaintiff or was in any way improper.

21.

Defendant is without sufficient knowledge or information to admit or deny the allegations in Paragraph 21 of the Complaint, and therefore denies those allegations. Defendant further denies the implicit allegations that Plaintiff was “mentally ill,” that the December 12 warning letter was in any way improper, or that it contributed to Plaintiff’s alleged “mental illness.”

22.

Defendant denies the allegations in Paragraph 22 of the Complaint.

23.

Defendant admits only that Plaintiff submitted a written note from his physician stating that Plaintiff could return to “light duty” work on February 21, 2001. Defendant denies the remaining allegations in Paragraph 23 of the Complaint.

24.

Defendant denies the allegations in Paragraph 24 of the Complaint.

25.

Defendant denies the allegations in Paragraph 25 of the Complaint.

26.

Defendant is without sufficient knowledge or information to admit or deny the allegations in Paragraph 26 of the Complaint, and therefore denies those allegations. Defendant further denies the implicit allegation that Plaintiff’s alleged “mental illness” was caused by Sumter Electric.

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27.

Defendant denies the allegations in Paragraph 27 of the Complaint.

28.

Defendant admits only that it notified Plaintiff in writing on March 7, 2001 that his employment had ended. Defendant denies the remaining allegations in Paragraph 28 of the Complaint.

29.

Defendant is without sufficient knowledge or information to admit or deny whether Plaintiff was hospitalized. Defendant denies the remaining allegations in Paragraph 29 of Complaint, including the implicit allegation that Plaintiff's alleged mental condition was caused and/or worsened by Sumter Electric.

COUNT I

30.

Defendant denies the allegations in Paragraph 30 of the Complaint.

31.

Defendant denies the allegations in Paragraph 31 of the Complaint.

32.

Defendant denies the allegations in Paragraph 32 of the Complaint.

33.

Defendant denies the allegations in Paragraph 33 of the Complaint.

34.

Defendant denies the allegations in Paragraph 34 of the Complaint.



35.

Based on information and belief, Defendant admits that Plaintiff has hired Klatt & Sivic, P.A. to represent him in connection with the captioned litigation. Defendant denies the remaining allegations in Paragraph 35 of the Complaint.

COUNT II

36.

Defendant denies the allegations in Paragraph 36 of the Complaint.

37.

Defendant denies the allegations in Paragraph 37 of the Complaint.

38.

Defendant denies the allegations in Paragraph 38 of the Complaint.

39.

Defendant denies the allegations in Paragraph 39 of the Complaint.

40.

Defendant denies the allegations in Paragraph 40 of the Complaint.

41.

Defendant denies the allegations in Paragraph 41 of the Complaint, including the implicit allegation that Sumter Electric did anything illegal.

42.

Based on information and belief, Defendant admits that Plaintiff has retained Klatt & Sivic, P.A. to represent him in connection with the captioned litigation. Defendant denies the remaining allegations in Paragraph 42 of the Complaint.

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COUNT III

43.

The allegations in Paragraph 43 of the Complaint improperly call for a legal conclusion. To the extent a response is required, Defendant admits only that the FCRA speaks for itself. Defendant denies the remaining allegations in Paragraph 43 of the Complaint.

44.

Defendant denies the allegations in Paragraph 44 of the Complaint.

45.

Defendant admits only that the Florida Commission on Human Relations (“FCHR”) issued a Notice of Dismissal. Defendant denies the remaining allegations in Paragraph 45 of the Complaint.

46.

Defendant denies the allegations in Paragraph 46 of the Complaint.

46. [sic]

Defendant denies the allegations in the second Paragraph 46 (misnumbered) of the Complaint.

47.

Defendant denies the allegations in Paragraph 47 of the Complaint.

48.

Defendant admits the allegations in Paragraph 48 of the Complaint.

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49.

Based on information and belief, Defendant admits that Plaintiff has retained Klatt & Sivic, P.A. to represent him in connection with the captioned litigation. Defendant denies the remaining allegations in Paragraph 49 of the Complaint.

50.

Defendant admits only that Plaintiff requests a trial by jury, but denies that Plaintiff is entitled to any relief whatsoever.

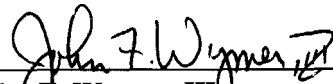
51.

Defendant denies each and every Complaint allegation, whether express or implied, that is not unequivocally and expressly admitted in this Answer.

WHEREFORE, Defendant respectfully requests that:

1. Plaintiff take nothing, and that the Complaint be dismissed in its entirety;
2. Judgment be entered in favor of Defendant;
3. The Court award Defendant its costs of litigation, including reasonable attorneys' fees;
4. The Court grant such other appropriate relief as is just and proper.

Respectfully submitted,



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Counsel for Defendant

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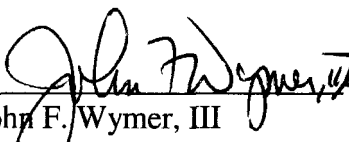
**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing ANSWER has been sent by

United States Mail to:

Leonard H. Klatt  
KLATT & SIVIC, P.A.  
7753 SW State Road 200  
Ocala, FL 34476

This 17<sup>th</sup> day of March, 2003.

  
John F. Wymer, III  
Counsel for Defendant