

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

**MARK E. GRILE,** )  
 )  
 **Plaintiff,** )  
 )  
 vs. )  
 )  
 **SUMTER ELECTRIC** )  
 **COOPERATIVE, INC.,** )  
 **a Florida corporation,** )  
 )  
 **Defendant.** )  
 \_\_\_\_\_ )

**Case No. 5:05-CV-00509-WTH-GRJ**

**ANSWER**

Defendant Sumter Electric Cooperative, Inc. (“Defendant” or “Sumter Electric”) answers the 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”).

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.

SEVENTH DEFENSE

Any purported accommodation would not have been possible without creating undue hardship on Defendant.

EIGHTH DEFENSE

Defendant is not subject to a claim for punitive and/or liquidated damages because any allegedly discriminatory decisions would have been contrary to Sumter Electric’s good faith efforts to comply with the ADA and the Family and Medical Leave Act of 1993, 29 U.S.C. § 2601 et seq. (“FMLA”).

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

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

TWELFTH DEFENSE

Plaintiff’s breach of contract claim fails for lack of and/or failure of consideration.

THIRTEENTH DEFENSE

Because Plaintiff was no longer an employee of Defendant when he purportedly sold his Georgia home, any obligation that Defendant may have had with regard to the sale of that home was discharged by Plaintiff's failure to satisfy a condition precedent and/or a condition subsequent.

FOURTEENTH DEFENSE

Plaintiff's claims for punitive damages violate Defendant's constitutional protection from, including without limitation, excessive fines, cruel and unusual punishment, denial of due process, and denial of equal protection of the law.

FIFTEENTH 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 for alleged violations of the ADA and the FMLA, and for breach of contract. 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 only that jurisdiction is proper in this Court, but denies that it has committed any violation of law and further denies the remaining allegations in Paragraph 2 of the Complaint.

3.

Defendant denies the allegations in Paragraph 3 of the Complaint.

4.

Defendant admits the allegations in Paragraph 4 of the Complaint.

5.

Defendant denies that Plaintiff has a degree in electrical engineering, but otherwise admits the allegations in Paragraph 5 of the Complaint.

6.

Defendant admits the allegations in Paragraph 6 of the Complaint.

7.

Defendant admits the allegations in Paragraph 7 of the Complaint.

8.

Defendant admits only that this action purports to be brought pursuant to the statutes referenced in Paragraph 8 of the Complaint, but denies that it has committed any violation of law and further denies the remaining allegations in Paragraph 8 of the Complaint.

9.

Based on information and belief, Defendant admits only that Plaintiff purportedly filed a charge of discrimination dated September 13, 2005 with the Equal Employment Opportunity Commission (“EEOC”) and that the EEOC issued a Dismissal and Notice of Rights dated September 29, 2005 which states that Plaintiff’s “allegations did not involve a disability that is covered by the Americans with Disabilities Act.” Defendant denies the remaining allegations in Paragraph 9 of the Complaint.

10.

Defendant denies the allegations in Paragraph 10 of the Complaint.

11.

Defendant admits only that jurisdiction is proper in this Court, but denies that it has committed any violation of law.

12.

Defendant is without sufficient knowledge or information to admit or deny the allegations in Paragraph 12 of the Complaint, and therefore denies those allegations.

13.

Defendant denies the allegations in Paragraph 13 of the Complaint.

14.

Defendant admits only that Plaintiff's duties involved some supervisory responsibilities. Defendant denies the remaining allegations in Paragraph 14 of the Complaint.

15.

Defendant is without sufficient knowledge or information to admit or deny the allegations in Paragraph 15 of the Complaint, and therefore denies those allegations.

16.

Defendant admits only that Plaintiff signed his six-month performance evaluation in November 2004. Defendant avers that the evaluation speaks for itself and is the best evidence of its contents. Defendant denies the remaining allegations in Paragraph 16 of the Complaint.

17.

Defendant denies the allegations in Paragraph 17 of the Complaint.

18.

Defendant admits only that Plaintiff told Mr. Huber that Plaintiff would like to be assigned to a vacant office. Defendant denies the remaining allegations in Paragraph 18 of the Complaint.

19.

Defendant denies the allegations in Paragraph 19 of the Complaint.

20.

Defendant denies the allegations in Paragraph 20 of the Complaint.

21.

Defendant is without sufficient knowledge or information to admit or deny whether Plaintiff increased his medication or whether his alleged “medical condition” worsened, and therefore denies those allegations. Defendant denies the implicit allegation that Plaintiff’s alleged “medical condition” was aggravated by anyone at Sumter Electric, and further denies the remaining allegations in Paragraph 21 of the Complaint.

22.

Defendant admits that Plaintiff sent an email dated May 16, 2005 to John Huber and Audrey Whitley. The email speaks for itself and is the best evidence of its contents. Defendant further admits that Ms. Whitley responded to the email and allowed Plaintiff to take medical leave. Defendant denies the remaining allegations in Paragraph 22 of the Complaint.

23.

Defendant denies the allegations in Paragraph 23 of the Complaint.

24.

Defendant admits only that Plaintiff was given his annual performance evaluation after he returned to work on or about May 24, 2005. The evaluation speaks for itself and is the best evidence of its contents. Defendant denies the remaining allegations in Paragraph 24 of the Complaint.

25.

Defendant admits only that Plaintiff applied for other positions while he was employed at Sumter Electric, but denies that Plaintiff was qualified for any of the positions. Defendant has no information with which to admit or deny the allegations as to what Plaintiff "believed," and therefore denies that allegation. Defendant further denies the remaining allegations in Paragraph 25 of the Complaint.

26.

Defendant admits that it discharged Plaintiff on August 19, 2005 for business reasons connected with his job performance as a Lead Service Planner. Defendant denies the remaining allegations in Paragraph 26 of the Complaint.

27.

Defendant is without sufficient knowledge or information to admit or deny the allegations in Paragraph 27 of the Complaint, and therefore denies those allegations.

#### COUNT I

28.

Defendant denies the allegations in Paragraph 28 of the Complaint.

29.

Defendant denies the allegations in Paragraph 29 of Complaint, including the implied allegations that Plaintiff requested and was denied an accommodation.

30.

Defendant denies the allegations in Paragraph 30 of the Complaint.

31.

Defendant denies the allegations in Paragraph 31 of the Complaint.

32.

Defendant admits only that Plaintiff applied for other positions while at Sumter Electric, but denies that he was qualified for the positions and further denies that Plaintiff sought the positions as an accommodation for an alleged disability. Defendant denies the remaining allegations in Paragraph 32 of the Complaint.

33.

Defendant denies the allegations in Paragraph 33 of the Complaint.

34.

Based on information and belief, Defendant admits that Plaintiff appears to have retained Klatt & Sivic, P.A. to represent him in connection with the captioned litigation. Defendant denies the remaining allegations in Paragraph 34 of the Complaint.

## COUNT II

35.

Defendant denies the allegations in Paragraph 35 of the Complaint.

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 admits only that Plaintiff applied for other positions while at Sumter Electric, but denies that he was qualified for the positions and further denies that Plaintiff sought the positions as an accommodation for an alleged disability. Defendant denies the remaining 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.

42.

Based on information and belief, Defendant admits that Plaintiff appears to have 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.

### COUNT III

43.

Defendant admits only that Plaintiff requested FMLA leave, a request that was processed and approved. Defendant denies the remaining allegations in Paragraph 43 of the Complaint.

44.

Defendant denies the allegations in Paragraph 44 of the Complaint.

45.

Defendant denies the allegations in Paragraph 45 of the Complaint.

46.

Defendant denies the allegations in Paragraph 46 of the Complaint.

47.

Defendant denies the allegations in Paragraph 47 of the Complaint.

48.

Defendant denies the allegations in Paragraph 48 of the Complaint.

49.

Based on information and belief, Defendant admits that Plaintiff appears to have 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.

COUNT IV

50.

Defendant denies the allegations in Paragraph 50 of the Complaint and avers that the letter attached to the Complaint as Exhibit E speaks for itself and is the best evidence of its contents.

51.

Defendant denies the allegations in Paragraph 51 of the Complaint.

52.

Defendant denies the allegations in Paragraph 52 of the Complaint.

53.

Paragraph 53 of the Complaint contains no factual or legal allegations and therefore requires no response from Defendant.

54.

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,

s/ Jona J. Miller

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*\*pro hac vice application pending*

ATTORNEYS FOR DEFENDANT  
SUMTER ELECTRIC  
COOPERATIVE, INC.

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<b>SUMTER ELECTRIC</b>	)	
<b>COOPERATIVE, INC.,</b>	)	
<b>a Florida corporation,</b>	)	
	)	
<b>Defendant.</b>	)	

**CERTIFICATE OF SERVICE**

I hereby certify that on February 7, 2006, I electronically filed the **ANSWER** with the Clerk of Court using the CM/ECF system which will automatically send e-mail notification of such filing to the following attorney of record:

Leonard H. Klatt  
KLATT & SIVIC, P.A.  
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s/ Jona J. Miller  
Jona J. Miller  
Counsel for Defendant