

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

KATHERINE VEILLEUX, JENNIFER CHON
ROCKY COAST FAMILY ACUPUNCTURE,
and JAMES TILTON, individually and on beha
all others similarly situated,

Plaintiffs

v.

ELECTRICITY MAINE, LLC, PROVIDER
POWER, LLC,
SPARK HOLDCO, LLC,
KEVIN DEAN and EMILE CLAVET,

Defendants

CASE NO: 1:16-cv-571-NT

**ANSWER TO PLAINTIFFS' THIRD AMENDED COMPLAINT
BY DEFENDANTS ELECTRICITY MAINE, LLC AND SPARK HOLDCO, LLC**

Defendants Electricity Maine, LLC and Spark Holdco, LLC respond to Plaintiffs' Third Amended Complaint ("Complaint") as follows:

1. Defendants admit that Electricity Maine is a competitive electricity provider ("CEP"). Defendants deny the remaining material allegations contained in paragraph 1 of the Complaint.

2. Defendants admit that in February 2018, the Maine Public Utilities Commission released a report on Competitive Electricity Provider and Standard Offer Price Comparisons. Defendants deny the remaining material allegations contained in paragraph 2 of the Complaint.

3. Defendants deny the material allegations contained in paragraph 3 of the Complaint.

PARTIES

4. Defendants are without knowledge or information sufficient to form a belief about the truth of the material allegations contained in paragraph 4 of the Complaint.

5. Defendants are without knowledge or information sufficient to form a belief about the truth of the material allegations contained in paragraph 5 of the Complaint.

6. Defendants are without knowledge or information sufficient to form a belief about the truth of the material allegations contained in paragraph 6 of the Complaint.

7. Defendants are without knowledge or information sufficient to form a belief about the truth of the material allegations contained in paragraph 7 of the Complaint.

8. Defendants admit that Electricity Maine is a Maine limited liability company. Defendants deny the remaining material allegations contained in paragraph 8 of the Complaint.

9. Defendants admit that Provider Power, LLC, is a Maine limited liability company with a place of business in Auburn, Maine. Defendants deny the remaining material allegations contained in paragraph 9 of the Complaint.

10. Defendants admit that Defendant Spark HoldCo, LLC (“Spark”) is a Delaware limited liability company with a principal place of business in Houston, Texas, and that Spark purchased all outstanding membership interests in Electricity Maine from Provider Power, LLC, but deny the remaining material allegations contained in paragraph 10 of the Complaint.

11. Defendants admit that Kevin Dean is an individual residing in Maine and that he is a controlling member of Provider Power, LLC. Defendants further admit that Kevin Dean provided consulting services to Electricity Maine after the sale of Electricity Maine to Spark. Defendants deny the remaining material allegations contained in paragraph 11 of the Complaint.

12. Defendants admit that Emile Clavet is an individual residing in Maine and that he is a controlling member of Provider Power, LLC. Defendants further admit that Emile Clavet

provided consulting services to Electricity Maine after the sale of Electricity Maine to Spark. Defendants deny the remaining material allegations contained in paragraph 12 of the Complaint.

JURISDICTION AND VENUE

13. Paragraph 13 of the Complaint states a legal conclusion to which no response is required. To the extent paragraph 13 of the Complaint includes material factual allegations, they are denied.

14. Paragraph 14 of the Complaint states a legal conclusion to which no response is required. To the extent paragraph 14 of the Complaint includes material factual allegations, they are denied.

GENERAL ALLEGATIONS

15. Defendants admit that, prior to 2000, regulated investor- and consumer-owned electric utilities in Maine enjoyed a vertical monopoly in the generation, transmission, and supply of electricity to Maine residential, commercial, and industrial consumers of electricity, but deny the remaining material allegations contained in paragraph 15 of the Complaint.

16. Defendants admit that in 2000, the Maine Legislature enacted the Restructuring Act, that the Act, among other things, permitted CEPs to enter the retail electricity supply market to sell electricity to residential, commercial, and industrial consumers in Maine in competition with standard-offer providers, and that under that Act certain electricity suppliers continue to supply electricity to Maine consumers and businesses on terms known as standard-offer service. Defendants further admit that the Maine Public Utilities Commission must approve the standard-offer rate. Defendants deny the remaining material allegations contained in paragraph 16 of the Complaint.

17. Defendants admit that CEPs initially marketed their services only to industrial and commercial customers, and in general viewed the residential electricity market as unprofitable due to the cost of transacting with individual consumers through methods of marketing then traditionally used. Defendants deny the remainder of the material allegations contained in paragraph 17 of the Complaint.

18. Defendants admit the material allegations contained in paragraph 18 of the Complaint.

19. Defendants admit that Electricity Maine's success was due in part to innovative marketing and a unique business model, and that Electricity Maine sometimes promoted its ability to compete on price and described its business as simple and straightforward, informing potential customers that "there is no catch, no gimmicks" and that the promised low rates were not "too good to be true." Defendants deny the remaining material allegations contained in paragraph 19 of the Complaint.

20. Defendants deny the material allegations contained in paragraph 20 of the Complaint.

21. Defendants deny the material allegations contained in paragraph 21 of the Complaint.

22. Defendants admit that in 2013 Electricity Maine pursued different ways to acquire new customers other than competing with the Standard Offer. Defendants deny the remaining material allegations contained in paragraph 22 of the Complaint.

23. Defendants admit that Electricity Maine partnered with charities and non-profit organizations, including the Dempsey Foundation, and used the phrase "the Power to Help" in its marketing and advertising efforts. Defendants also admit that between 2014 and 2016 it spent

money on advertising. Defendants deny the remaining material allegations contained in paragraph 23 of the Complaint.

24. Defendants deny the material allegations contained in paragraph 24 of the Complaint.

25. Defendants deny the material allegations contained in paragraph 25 of the Complaint.

26. Defendants admit that in 2018, the Maine Public Utilities Commission released a report, a copy of which is attached to Plaintiffs' Complaint as Exhibit A. Defendants deny the remaining material allegations contained in paragraph 26 of the Complaint.

27. Defendants admit that over a less-than-two-year period—from mid-2011 through March 2013—nearly one-third of the Maine residential and small-business electricity supply market customers decided to enroll for service with Electricity Maine. Defendants deny the remaining material allegations contained in paragraph 27 of the Complaint.

28. Defendants admit that Electricity Maine created certain marketing materials, written and audio/video, and provided them to media outlets in Maine. Defendants further admit that radio stations were provided with various talking points for their disc jockeys to utilize. Defendants deny the remaining material allegations contained in paragraph 28 of the Complaint.

29. Defendants admit that certain of Electricity Maine's advertising materials during a certain period of time contained a "message" that customers would save money compared to the standard offer. Defendants deny the remaining material allegations contained in paragraph 29 of the Complaint.

30. Defendants admit that customers enrolled with Electricity Maine by entering personal and utility-provider information through Electricity Maine's website. Defendants deny the remaining material allegations contained in paragraph 30 of the Complaint.

31. Defendants deny the material allegations contained in paragraph 31 of the Complaint.

32. Defendants admit the material allegations contained in paragraph 32 of the Complaint.

33. Defendants deny the material allegations contained in paragraph 33 of the Complaint.

34. Defendants deny the material allegations contained in paragraph 34 of the Complaint.

35. Defendants deny the material allegations contained in paragraph 35 of the Complaint.

36. Defendants admit that Electricity Maine was a locally owned and operated company in 2013 and it began using the "Power to Help" slogan in 2013. Defendants deny the remaining material allegations contained in paragraph 36 of the Complaint.

37. Defendants admit that Electricity Maine partnered with local non-profits and charitable organizations and was involved with community events and functions and that Defendants Clavet and Dean appeared at certain charitable functions. Defendants deny the remaining material allegations contained in paragraph 37 of the Complaint.

38. Defendants deny the material allegations contained in paragraph 38 of the Complaint.

39. Defendants admit that the “Power to Help” slogan was and continues to be used in Electricity Maine’s marketing efforts after Spark’s acquisition. Defendants deny the remaining material allegations contained in paragraph 39 of the Complaint.

40. Defendants deny the material allegations contained in paragraph 40 of the Complaint.

41. Defendants deny the material allegations contained in paragraph 41 of the Complaint.

42. Defendants deny the material allegations contained in paragraph 42 of the Complaint.

43. Defendants deny the material allegations contained in paragraph 43 of the Complaint.

44. Defendants deny the material allegations contained in paragraph 44 of the Complaint.

45. Defendants deny the material allegations contained in paragraph 45 of the Complaint.

46. Defendants deny the material allegations contained in paragraph 46 of the Complaint.

47. Defendants deny the material allegations contained in paragraph 47 of the Complaint.

48. Defendants deny the material allegations contained in paragraph 48 of the Complaint.

49. Defendants admit that other entities affiliated with Spark Holdco are involved in litigation outside of Maine, and deny the remaining material allegations contained in paragraph 49 of the Complaint.

50. Defendants deny the material allegations contained in paragraph 50 of the Complaint.

51. Defendants admit that a copy of a police report from the Norway, Maine Police Department is attached to Plaintiffs' Complaint. Defendants deny the remaining material allegations contained in paragraph 51 of the Complaint.

52. Defendants deny the material allegations contained in paragraph 52 of the Complaint.

53. Defendants deny the material allegations contained in paragraph 53 of the Complaint.

54. Defendants deny the material allegations contained in paragraph 54 of the Complaint.

55. Defendants admit that, for most customers' reenrollments, Electricity Maine has used an automated process for generation of renewal notices, all of which complied with governing law including regulations of the Maine Public Utilities Commission, and that customers were typically renewed in batches. Defendants deny the remaining material allegations contained in paragraph 55 of the Complaint.

56. Defendants deny the material allegations contained in paragraph 56 of the Complaint.

57. Defendants deny the material allegations contained in paragraph 57 of the Complaint.

58. Defendants deny the material allegations contained in paragraph 58 of the Complaint.

59. Defendants deny the material allegations contained in paragraph 59 of the Complaint.

60. Defendants deny the material allegations contained in paragraph 60 of the Complaint.

61. Defendants admit that Electricity Maine sent renewal notices to customers at email addresses provided by those customers, and that from January 2015 through January 2018, Electricity Maine used software to track whether any of its emails bounced back from a recipient, or whether a recipient had opened the email. Defendants deny the remaining material allegations contained in paragraph 61 of the Complaint.

62. Defendants deny the material allegations contained in paragraph 62 of the Complaint.

63. Defendants deny the material allegations contained in paragraph 63 of the Complaint.

64. Defendants admit that the weighted average of the standard offer price for residential and small commercial customers in 2015 was \$0.671/kWh, and that the PUC report issued on February 15, 2018 stated that, in 2015, the difference between Electricity Maine's price and the weighted average standard offer price equaled \$30,262,973. Defendants deny the remaining material allegations contained in paragraph 64 of the Complaint.

65. Defendants admit that on or about October 1, 2014, Electricity Maine sent Plaintiff Jennifer Chon an email stating in part that "To protect you from rising rates, we have secured a competitive, 24 month fixed contract for you at \$0.11394/kWh, ending on your meter

date in December, 2016.” Defendants deny the remaining material allegations contained in paragraph 65 of the Complaint.

66. Defendants deny that renewal notices transmitted by Electricity Maine to the customer by email, at the email address supplied by the customer, consistently went directly to customers’ spam folders and that it informed Plaintiff Chon of that. Defendants are without knowledge or information sufficient to form a belief about the truth of the remaining material allegations contained in paragraph 66 of the Complaint.

67. Defendants admit that Plaintiff Veilleux received an email from Electricity Maine on June 28, 2017 offering her a year of service at \$0.1099/kWh. Defendants deny the remaining material allegations contained in paragraph 67 of the Complaint.

68. Defendants deny the material allegations contained in paragraph 68 of the Complaint.

69. Defendants deny the material allegations contained in paragraph 69 of the Complaint.

70. Defendants deny the material allegations contained in paragraph 70 of the Complaint.

71. Paragraph 71 of the Complaint states a legal conclusion to which no response is required. To the extent paragraph 71 of the Complaint includes any factual allegations, they are denied.

72. Paragraph 72 of the Complaint states legal conclusions to which no response is required. To the extent paragraph 72 of the Complaint includes factual allegations, they are denied.

73. Paragraph 73 of the Complaint states legal conclusions to which no response is required. To the extent paragraph 73 of the Complaint includes factual allegations, they are denied.

74. Defendants deny the material allegations contained in paragraph 74 of the Complaint.

75. Defendants deny the material allegations contained in paragraph 75 of the Complaint.

76. Defendants deny the material allegations contained in paragraph 76 of the Complaint.

77. Defendants deny the material allegations contained in paragraph 77 of the Complaint.

78. Defendants deny the material allegations contained in paragraph 78 of the Complaint.

79. Defendants deny the material allegations contained in paragraph 79 of the Complaint.

80. Defendants deny the material allegations contained in paragraph 80 of the Complaint.

81. Defendants oppose certification of the proposed class and deny it is proper.

COUNT I
VIOLATION OF THE RACKETEER INFLUENCED AND CORRUPT
ORGANIZATIONS ACT ("RICO") -18 U.S.C. §§ 1962(c), 1964(c)

82. Defendants restate and incorporate by reference all preceding paragraphs of this Answer as if fully set forth herein.

83. Defendants deny the material allegations contained in paragraph 83 of the Complaint.

84. Defendants deny the material allegations contained in paragraph 84 of the Complaint.

85. Defendants deny the material allegations contained in paragraph 85 of the Complaint.

86. Defendants deny the material allegations contained in paragraph 86 of the Complaint.

87. Defendants deny the material allegations contained in paragraph 87 of the Complaint.

88. Defendants deny the material allegations contained in paragraph 88 of the Complaint.

89. Defendants deny the material allegations contained in paragraph 89 of the Complaint.

90. Defendants deny the material allegations contained in paragraph 90 of the Complaint.

91. Defendants deny the material allegations contained in paragraph 91 of the Complaint.

92. Defendants admit that Emile Clavet and Kevin Dean are natural persons. Defendants deny the remaining material allegations contained in paragraph 92 of the Complaint.

93. Defendants admit that Spark Holdco is a Texas-based company that, prior to May 2016, was unaffiliated with Electricity Maine, and that Spark Holdco has never been affiliated

with Provider Power, LLC. Defendants deny the remaining material allegations contained in paragraph 93 of the Complaint.

94. Defendants deny the material allegations contained in paragraph 94 of the Complaint.

95. Defendants deny the material allegations contained in paragraph 95 of the Complaint.

96. Defendants deny the material allegations contained in paragraph 96 of the Complaint.

97. Defendants deny the material allegations contained in paragraph 97 of the Complaint.

98. Defendants deny the material allegations contained in paragraph 98 of the Complaint

99. Defendants deny the material allegations contained in paragraph 99 of the Complaint.

100. Defendants deny the material allegations contained in paragraph 100 of the Complaint.

101. Defendants deny the material allegations contained in paragraph 101 of the Complaint.

102. Defendants deny the material allegations contained in paragraph 102 of the Complaint.

103. Defendants deny the material allegations contained in paragraph 103 of the Complaint.

104. Defendants deny the material allegations contained in paragraph 104 of the Complaint.

105. Defendants deny the material allegations contained in paragraph 105 of the Complaint.

106. Defendants deny the material allegations contained in paragraph 106 of the Complaint.

107. Defendants deny the material allegations contained in paragraph 107 of the Complaint.

108. Defendants deny the material allegations contained in paragraph 108 of the Complaint.

109. Defendants deny the material allegations contained in paragraph 109 of the Complaint.

110. Defendants deny the material allegations contained in paragraph 110 of the Complaint.

111. Defendants deny the material allegations contained in paragraph 111 of the Complaint.

112. Defendants admit that standard offer pricing is publicly available information of which Electricity Maine was aware. Defendants deny the remaining material allegations contained in paragraph 112 of the Complaint.

113. Defendants deny the material allegations contained in paragraph 113 of the Complaint.

114. Defendants deny the material allegations contained in paragraph 114 of the Complaint.

115. Defendants deny the material allegations contained in paragraph 115 of the Complaint.

116. Defendants deny the material allegations contained in paragraph 116 of the Complaint.

117. Defendants deny the material allegations contained in paragraph 117 of the Complaint.

118. Defendants deny the material allegations contained in paragraph 118 of the Complaint.

119. Defendants deny the material allegations contained in paragraph 119 of the Complaint.

120. Defendants admit that Electricity Maine did not enclose Plaintiffs' and putative class members' renewal notices with their utility bills because the utilities send customers their utility bills, not Electricity Maine. Defendants deny the remaining material allegations contained in paragraph 120 of the Complaint.

121. Defendants deny the material allegations contained in paragraph 121 of the Complaint.

122. Defendants admit that in October 2014, Electricity Maine sent Plaintiffs Veilleux and Chon renewal letters that stated: "We want to thank you for your business and let you know that your account with Electricity Maine is renewing in December 2014. To protect you from rising electricity rates, we have secured competitive, 24 month fixed contract for you at \$0.11394 /kWh, ending on your meter read date in December, 2016. There is no action required on your part." Defendants deny the remaining material allegations contained in paragraph 122 of the Complaint.

123. Defendants deny the material allegations contained in paragraph 123 of the Complaint.

124. Defendants admit that in January 2013, Electricity Maine sent Plaintiff Veilleux a renewal letter stating, “Just a quick letter to let you know that your electricity rate will be going down again this year in your auto renewal plan through Electricity Maine! Because of our buying capability, we were able to secure a rate of 6.823 cents/kWh for CMP customers beginning on your renewal date through your meter read date in November, 2013. This is down from 7.07 cents/kWh and continues to be lower than the Standard Offer. This means that you will continue to save on the power supply portion of your electric bill.” Defendants deny the remaining material allegations contained in paragraph 124 of the Complaint.

125. Defendants deny the material allegations contained in paragraph 125 of the Complaint.

126. Defendants deny the material allegations contained in paragraph 126 of the Complaint.

127. Defendants deny the material allegations contained in paragraph 127 of the Complaint.

128. Defendants deny the material allegations contained in paragraph 128 of the Complaint.

129. Defendants deny the material allegations contained in paragraph 129 of the Complaint.

130. Defendants deny the material allegations contained in paragraph 130 of the Complaint.

131. Defendants deny the material allegations contained in paragraph 131 of the Complaint.

132. Defendants deny the material allegations contained in paragraph 132 of the Complaint.

133. Defendants deny the material allegations contained in paragraph 133 of the Complaint.

134. Defendants deny the material allegations contained in paragraph 134 of the Complaint.

135. Defendants deny the material allegations contained in paragraph 135 of the Complaint.

136. Defendants deny the material allegations contained in paragraph 136 of the Complaint.

137. Defendants deny the material allegations contained in paragraph 137 of the Complaint.

138. Defendants deny the material allegations contained in paragraph 138 of the Complaint.

139. Defendants deny that Plaintiffs are entitled to the relief requested, and request that the Court enter judgment in favor of Defendants, and award to Defendants their fees and costs and such other relief as is just. Defendants further deny that class certification is appropriate in this matter.

COUNT II
VIOLATION OF THE RACKETEER INFLUENCED AND CORRUPT
ORGANIZATIONS ACT ("RICO") -18 U.S.C. §§ 1962(d), 1964(c)

140. Defendants restate and incorporate by reference all preceding paragraphs of this Answer as if fully set forth herein.

141. Defendants deny the material allegations contained in paragraph 141 of the Complaint.

142. Defendants deny the material allegations contained in paragraph 142 of the Complaint.

143. Defendants deny the material allegations contained in paragraph 143 of the Complaint.

144. Defendants deny the material allegations contained in paragraph 144 of the Complaint.

145. Defendants deny the material allegations contained in paragraph 145 of the Complaint.

146. Defendants deny the material allegations contained in paragraph 146 of the Complaint.

147. Defendants deny the material allegations contained in paragraph 147 of the Complaint.

148. Defendants deny the material allegations contained in paragraph 148 of the Complaint.

149. Defendants deny the material allegations contained in paragraph 149 of the Complaint.

150. Defendants admit that the chart contained in paragraph 150 appears in the May 3, 2016 Membership Interest Purchase Agreement by and among Spark HoldCo, LLC, Provider Power, LLC, Kevin B. Dean, and Emile L. Clavet. Defendants deny the remaining material allegations contained in paragraph 150 of the Complaint.

151. Defendants admit that the Membership Interest Purchase Agreement was amended to increase the maximum amount potentially payable to Clavet and Dean to \$9 million. Defendants deny the remaining material allegations contained in paragraph 151 of the Complaint.

152. Defendants deny the material allegations contained in paragraph 152 of the Complaint.

153. Defendants deny the material allegations contained in paragraph 153 of the Complaint.

154. Defendants deny the material allegations contained in paragraph 154 of the Complaint.

155. Defendants deny the material allegations contained in paragraph 155 of the Complaint.

156. Defendants deny the material allegations contained in paragraph 156 of the Complaint.

157. Defendants deny the material allegations contained in paragraph 157 of the Complaint.

158. Defendants deny that Plaintiffs are entitled to the relief requested, and request that the Court enter judgment in favor of Defendants, and award to Defendants their fees and costs

and such other relief as is just. Defendants further deny that class certification is appropriate in this matter.

COUNT III
VIOLATION OF THE MAINE UNFAIR TRADE PRACTICES ACT -5 M.R.S. § 207

159. Defendants restate and incorporate by reference all preceding paragraphs of this Answer as if fully set forth herein.

160. Defendants deny the material allegations contained in paragraph 160 of the Complaint.

161. Defendants deny the material allegations contained in paragraph 161 of the Complaint.

162. Defendants deny the material allegations contained in paragraph 162 of the Complaint.

163. Defendants deny the material allegations contained in paragraph 163 of the Complaint.

164. Defendants deny the material allegations contained in paragraph 164 of the Complaint.

165. Defendants deny that Plaintiffs are entitled to the relief requested, and request that the Court enter judgment in favor of Defendants, and award to Defendants their fees and costs and such other relief as is just. Defendants further deny that class certification is appropriate in this matter.

COUNT IV
UNJUST ENRICHMENT

166. Defendants restate and incorporate by reference all preceding paragraphs of this Answer as if fully set forth herein.

167. Defendants deny the material allegations contained in paragraph 167 of the Complaint.

168. Defendants deny the material allegations contained in paragraph 168 of the Complaint.

169. Defendants deny the material allegations contained in paragraph 169 of the Complaint.

170. Defendants deny that Plaintiffs are entitled to the relief requested, and request that the Court enter judgment in favor of Defendants, and award to Defendants their fees and costs and such other relief as is just. Defendants further deny that class certification is appropriate in this matter.

**COUNT V
CIVIL CONSPIRACY**

171. Defendants restate and incorporate by reference all preceding paragraphs of this Answer as if fully set forth herein.

172. Defendants deny the material allegations contained in paragraph 172 of the Complaint.

173. Defendants deny the material allegations contained in paragraph 173 of the Complaint.

174. Defendants deny the material allegations contained in paragraph 174 of the Complaint.

175. Defendants deny the material allegations contained in paragraph 175 of the Complaint.

176. Defendants deny that Plaintiffs are entitled to the relief requested, and request that the Court enter judgment in favor of Defendants, and award to Defendants their fees and costs

and such other relief as is just. Defendants further deny that class certification is appropriate in this matter.

JURY DEMAND

Defendants admit that Plaintiffs have demanded trial by jury, but deny that Plaintiffs are entitled to trial by jury on all claims and issues pleaded.

STATEMENT OF ADDITIONAL DEFENSES

1. The Complaint, in whole or in part, fails to state a claim on which relief can be granted.
2. Plaintiffs fail to satisfy the prerequisites for maintenance of a class action under Rule 23 of the Federal Rules of Civil Procedure and applicable case law, and all class allegations should be stricken and all claims by or on behalf of a putative class should be dismissed.
3. Plaintiffs lack standing to assert the claims stated, including the claims of the putative class.
4. Plaintiffs and putative class members fail to establish the prerequisites under the Racketeer Influenced and Corrupt Organizations Act in that they have failed to distinguish between the enterprise and the person engaged in the conduct of the enterprise.
5. Plaintiffs and putative class members fail to establish the prerequisites under the Racketeer Influenced and Corrupt Organizations Act in that they have failed to allege that Defendants conducted the alleged enterprise beyond conducting the business in the normal course.
6. Plaintiffs and putative class members fail to establish the prerequisites under the Racketeer Influenced and Corrupt Organizations Act in that they have failed to sufficiently allege a pattern of predicate acts.

7. Plaintiffs and putative class members fail to establish the prerequisites under the Racketeer Influenced and Corrupt Organizations Act in that they have failed to allege a scheme to defraud beyond mere puffery.

8. The claims of Plaintiffs and putative class members are barred, in whole or in part, because Plaintiffs have failed to allege properly the use of interstate mail or wire communications in furtherance of the alleged scheme.

9. Plaintiffs and putative class members fail to establish the prerequisites under the Racketeer Influenced and Corrupt Organizations Act in that they have failed to demonstrate that Defendants knowingly joined a conspiracy to violate the Racketeer Influenced and Corrupt Organizations Act or that Plaintiffs were injured by the commission of an over act in furtherance of the conspiracy.

10. The claims of Plaintiffs and putative class members are barred, in whole or in part, because any alleged misrepresentation made by Defendants was made in good faith.

11. The claims of Plaintiffs and putative class members under the Maine Unfair Trade Practices Act are barred because neither Plaintiffs nor any of the putative class members have suffered substantial pecuniary harm proximately caused by Electricity Maine's conduct alleged to violate the Act.

12. Electricity Maine has complied with the rules promulgated by Maine's Public Utilities Commission governing competitive electricity providers and the sections codified in Maine's Electric Industry Restructuring Act, thereby barring the claims by Plaintiffs and the putative class in whole or in part.

13. The claims of Plaintiffs and putative class members are barred, in whole or in part, because the Maine Public Utilities Commission has primary jurisdiction.

14. The claims of Plaintiffs and putative class members are barred, in whole or in part, for failure to exhaust their administrative remedies.

15. Electricity Maine has complied with and performed all promises, obligations, and duties to Plaintiffs and putative class members under the contracts at issue and has fulfilled its obligations under the terms, conditions, and limitations of those contracts, thereby barring the claims by Plaintiffs and the putative class in whole or in part.

16. The claims of Plaintiffs and putative class members are barred, in whole or in part, by the parties' course of dealing.

17. The claims of Plaintiffs and putative class members are barred, in whole or in part, by the doctrine of ratification.

18. The claims of Plaintiffs and putative class members are barred, in whole or in part, by the doctrine of consent.

19. The claims of Plaintiffs and putative class members are barred, in whole or in part, by accord and satisfaction.

20. The claims of the Plaintiffs and putative class members are barred, in whole or in part, by each of the doctrines of waiver, disclaimer, laches, and estoppel.

21. The contract claims of Plaintiffs and putative class members are barred, in whole or in part, by Maine's economic loss doctrine.

22. The unjust enrichment claims of Plaintiffs and putative class members are barred, in whole or in part, by the existence of a contractual relationship between Electricity Maine and Plaintiffs and putative class members.

23. The equitable claims of Plaintiffs and putative class members are barred because if they have a remedy at all, it is a remedy at law.

24. The claims of Plaintiffs and putative class members are barred, in whole or in part, or recovery thereon limited, by the doctrine of comparative fault.

25. The claims of Plaintiffs and putative class members are barred, in whole or in part, by the doctrine of assumption of risk.

26. The claims of Plaintiffs and putative class members are barred because Plaintiffs and putative class members cannot demonstrate actual reliance premised on any act or omission of Electricity Maine.

27. Plaintiffs and putative class members have failed to mitigate their damages.

28. The tort claims of Plaintiffs and putative class members are barred, in whole or in part, by Maine's independent duty doctrine.

29. The claims of Plaintiffs and putative class members are barred, in whole or in part, where the complained of statements were statements of opinion, promises of future performance, mere hyperbole, and/or puffery not actionable under Maine law.

30. The claims of the Plaintiffs are barred, in whole or in part, because Plaintiffs have not pleaded fraud with particularity as required by Rule 9(b) of the Federal Rules of Civil Procedure.

31. Certification of the putative class as requested would violate Electricity Maine's right to due process of law under the United States and Maine Constitutions.

32. This Court should abstain from ruling on the claims of Plaintiffs and putative class members pursuant to *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943), because the Plaintiffs and putative class members have a remedy with the PUC, a complex state administrative agency,

and the exercise of federal review would be disruptive of state efforts to establish a coherent policy with respect to a matter of substantial public concern.

33. Any request by Plaintiffs and putative class members for an award of punitive damages should be denied because Electricity Maine's conduct was not motivated by actual malice.

34. Any request by Plaintiffs and putative class members for an award of punitive damages should be denied because Electricity Maine's conduct was not so outrageous that malice can be implied.

35. To the extent Plaintiffs and putative class members seek to collect compensatory damages, penalties, punitive damages, exemplary damages, attorneys' fees and expenses, and/or any other monetary relief from Electricity Maine, Plaintiffs and putative class members seek a recovery that is so grossly excessive and inequitable that it would violate the Due Process Clause of the Fifth and Fourteenth Amendments of the United States Constitution.

36. Plaintiff James Tilton's claims, and claims by putative class members who accepted Electricity Maine's terms of service on or after October 24, 2016, are barred, in whole or in part, because they agreed to arbitrate "[a]ny claim, dispute or controversy, regarding any contract, tort, statute, or otherwise [] arising out of or relating to" their contracts with Electricity Maine, as expressly stated in their Terms of Service.

37. Plaintiff James Tilton's claims, and claims by putative class members who accepted Electricity Maine's terms of service on or after October 24, 2016, are barred, in whole or in part, because they waived their right to "maintain any Class Action in any forum" or to be a plaintiff or class member in any "purported class, collective, representative, multiple plaintiff, or similar proceeding" in contracting with Electricity Maine for their electricity supply service.

38. Plaintiffs' claims are barred, in whole or in part, because Maine law does not recognize a cause of action for civil conspiracy absent liability for an independent tort.

39. Electricity Maine reserves and does not waive any additional or further defenses as may be revealed by discovery.

Dated at Portland, Maine this 11th day of January, 2019

/s/ John J. Aromando
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*Attorneys for Defendants Electricity Maine, LLC and
Spark HoldCo, LLC*

CERTIFICATE OF SERVICE

I hereby certify that on January 11, 2019, I electronically filed the foregoing document using the CM/ECF system which will send the notification of such filing to counsel of record.

/s/ John J. Aromando

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