

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

KATHERINE VEILLEUX, and)
JENNIFER CHON, <i>individually and on</i>)
<i>behalf of all others similarly situated,</i>)
)
Plaintiffs,)
)
v.)
)
ELECTRICITY MAINE, LLC, PROVIDER)
POWER, LLC, SPARK HOLDCO, LLC,)
KEVIN DEAN, and EMILE CLAVET,)
)
Defendants.)

Case No. 1:16-cv-00571-NT

**ANSWER OF PROVIDER POWER, LLC, KEVIN DEAN, AND EMILE CLAVET TO
PLAINTIFFS’ THIRD AMENDED CLASS ACTION COMPLAINT**

Defendants Provider Power, LLC, Kevin Dean, and Emile Clavet (collectively the “Provider Defendants”) for their answer to Plaintiffs’ Third Amended Complaint state as follows:

INTRODUCTION

1. Provider Defendants admit that Defendant Electricity Maine, LLC (“Electricity Maine”) is a competitive electricity provider. Provider Defendants deny the remaining allegations contained in Paragraph 1 of the Third Amended Complaint.

2. Provider Defendants admit that the Maine Public Utilities Commission (“MPUC” or the “Commission”) issued a *Report on Competitive Electricity Provider and Standard Offer Price Comparisons* on February 14, 2018 (Exhibit A to Plaintiffs’ Third Amended Complaint), and that document speaks for itself. Provider Defendants deny the remaining allegations in Paragraph 2.

3. Provider Defendants deny the allegations contained in Paragraph 3 of the Third Amended Complaint.

PARTIES

4. Provider Defendants admit the allegations contained in Paragraph 4 of the Third Amended Complaint.

5. Provider Defendants admit the allegations contained in Paragraph 5 of the Third Amended Complaint.

6. Provider Defendants admit the allegations contained in Paragraph 6 of the Third Amended Complaint.

7. Provider Defendants admit the allegations contained in Paragraph 7 of the Third Amended Complaint.

8. Provider Defendants admit the allegations in Paragraph 8 of the Third Amended Complaint.

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

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

11. Provider Defendants admit that Defendant Kevin Dean is an individual residing in Maine, that he is a controlling member of Provider Power, LLC, and that he has provided consulting services to Electricity Maine after the sale of Electricity Maine to Spark. Provider

Defendants deny the remaining allegations contained in Paragraph 11 of the Third Amended Complaint.

12. Provider Defendants admit that Defendant Emile Clavet is an individual residing in Maine, that he is a controlling member of Provider Power, LLC and that he has provided consulting services to Electricity Maine after the sale of Electricity Maine to Spark. Provider Defendants deny the remaining allegations contained in Paragraph 12 of the Third Amended Complaint.

JURISDICTION AND VENUE

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

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

GENERAL ALLEGATIONS

15. Provider Defendants admit the allegations contained in Paragraph 15 of the Third Amended Complaint.

16. Provider Defendants admit that in 2000, the Maine Legislature enacted the Restructuring Act, 35-A M.R.S. §3201 *et seq.*, that that Act, among other things, permitted competitive electricity providers (“CEPs”) to enter the market and supply power in competition with existing utility 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.

Provider Defendants deny the remaining allegations contained in Paragraph 16 of the Third Amended Complaint.

17. Provider Defendants admit that following the enactment of 35-A M.R.S. § 320, CEPs initially marketed their services to industrial and commercial customers. Provider Defendants deny the remaining allegations contained in Paragraph 17 of the Third Amended Complaint.

18. Provider Defendants admit the allegations contained in Paragraph 18 of the Third Amended Complaint.

19. Provider Defendants admit that Electricity Maine's success was due in part to innovative marketing and a unique business model. Provider Defendants also admit that they sometimes promoted Electricity Maine's ability to compete on price and described Electricity Maine's 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." Provider Defendants deny the remaining allegations contained in Paragraph 19 of the Third Amended Complaint.

20. Provider Defendants deny the allegations contained in Paragraph 20 of the Third Amended Complaint.

21. Provider Defendants deny the allegations contained in Paragraph 21 of the Third Amended Complaint.

22. Provider Defendants deny the allegations contained in Paragraph 22 of the Third Amended Complaint.

23. Provider Defendants admit that it partnered with charities and non-profits through its “Power to Help” campaign and that between 2014 and 2016 Electricity Maine made substantial contributions to area charities and non-profits in connection with this initiative.

24. Provider Defendants deny the remaining allegations contained in Paragraph 24 of the Third Amended Complaint.

25. Provider Defendants deny the remaining allegations contained in Paragraph 25 of the Third Amended Complaint.

26. Provider Defendants admit that the MPUC issued a *Report on Competitive Electricity Provider and Standard Offer Price Comparisons* on February 14, 2018, and that that document—attached as Exhibit A to Plaintiffs’ Third Amended Complaint—speaks for itself. Provider Defendants deny the remaining allegations in Paragraph 26.

A. Fraudulent and Misleading Advertising and Promotion on Price Between 2011 and March 2013

27. Provider Defendants admit that over a less-than-two-year period—from mid-2011 through March 2013—Electricity Maine used radio, television, internet, print, and other forms of advertising and marketing to market their product to Maine residential and small-business consumers; managed to capture nearly one-third of the Maine residential and small-business electricity supply market; offered consumers significant price savings compared to the standard-offer; and encouraging consumers to switch from their utility-provided electricity supply services to Electricity Maine.

28. Provider Defendants admit Electricity Maine created and distributed marketing materials to media outlets throughout the State of Maine. Provider Defendants admit that between 2011 and 2013, Electricity Maine distributed uniform talking points which were read by certain disc jockeys on radio stations and pre-recorded audio and video clips. Provider

Defendant are unclear on what Plaintiffs are implying when they state that Electricity Maine distributed “form mailings published in newspapers and magazines” and, therefore, deny the allegation.

29. Provider Defendants admit that between 2011 and 2013, Electricity Maine marketed its services as having the ability to save customers money on their electricity bill compared to the standard-offer utility rate.

30. Provider Defendants deny the allegations contained in Paragraph 30 of the Third Amended Complaint.

31. Provider Defendants deny the allegations contained in Paragraph 31 of the Third Amended Complaint.

32. Provider Defendants admit the allegations contained in Paragraph 32 of the Third Amended Complaint

33. Provider Defendants deny the allegations contained in Paragraph 33 of the Third Amended Complaint

34. Provider Defendants deny the allegations contained in Paragraph 34 of the Third Amended Complaint.

35. Provider Defendants deny the allegations contained in Paragraph 35 of the Third Amended Complaint.

A. Post-March Advertising

36. Provider Defendants deny the allegations contained in Paragraph 36 of the Third Amended Complaint except that they admit that Electricity Maine used the “Power to Help” slogan in 2013..

37. Provider Defendants admit the allegations contained in Paragraph 37 of the Third Amended Complaint.

38. Provider Defendants deny the allegations contained in Paragraph 38 of the Third Amended Complaint.

39. Provider Defendants admit the allegations contained in Paragraph 39 of the Third Amended Complaint.

40. Provider Defendants deny the allegations contained in Paragraph 40 of the Third Amended Complaint.

B. Door-to-Door Fraud

41. Provider Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 41 of the Third Amended Complaint and, therefore, deny the same.

42. Provider Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 42 of the Third Amended Complaint and, therefore, deny the same.

43. Provider Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 43 of the Third Amended Complaint and, therefore, deny the same.

44. Provider Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 44 of the Third Amended Complaint and, therefore, deny the same.

45. Provider Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 45 of the Third Amended Complaint and, therefore, deny the same.

46. Provider Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 46 of the Third Amended Complaint and, therefore, deny the same.

47. Provider Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 47 of the Third Amended Complaint and, therefore, deny the same.

48. Provider Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 48 of the Third Amended Complaint and, therefore, deny the same.

49. Provider Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 49 of the Third Amended Complaint and, therefore, deny the same.

50. Provider Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 50 of the Third Amended Complaint and, therefore, deny the same.

51. Provider Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 51 of the Third Amended Complaint and, therefore, deny the same.

52. Provider Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 52 of the Third Amended Complaint and, therefore, deny the same.

C. Reenrollment Scheme

53. Provider Defendants deny the allegations contained in Paragraph 53 of the Third Amended Complaint.

54. Provider Defendants deny the allegations contained in Paragraph 54 of the Third Amended Complaint.

55. Provider Defendants deny the allegations contained in Paragraph 55 of the Third Amended Complaint.

56. Provider Defendants deny the allegations contained in Paragraph 56 of the Third Amended Complaint.

57. Provider Defendants deny the allegations contained in Paragraph 57 of the Third Amended Complaint.

58. Provider Defendants deny the allegations contained in Paragraph 58 of the Third Amended Complaint.

59. Provider Defendants deny the allegations contained in Paragraph 59 of the Third Amended Complaint.

60. Provider Defendants deny the allegations contained in Paragraph 60 of the Third Amended Complaint.

61. Provider Defendants deny the allegations contained in Paragraph 61 of the Third Amended Complaint.

62. Provider Defendants deny the allegations contained in Paragraph 62 of the Third Amended Complaint.

63. Provider Defendants admit Electricity Maine retained almost all existing customers through 2014 and 2015, but deny the remaining allegations in Paragraph 63.

64. Provider Defendants admit that the CMP standard offer rate for residential and small commercial customers from March 1, 2015 to March 31, 2015 was \$.0671/kWh; however the standard offer rate for CMP resident and small commercial customers from January 1, 2015 to February 28, 2015 was \$.075603. Provider Defendants deny the remaining allegations contained in Paragraph 64 of the Third Amended Complaint.

65. Provider 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.” Provider Defendants deny the remaining allegations contained in Paragraph 65 of the Third Amended Complaint.

66. Provider Defendants are without knowledge as to whether Electricity Maine’s October 1, 2014 email appeared in Plaintiff Chon’s inbox or whether she recovered it from her spam folder in 2016. Provider Defendants admit that at that time, the standard-offer rate was approximately \$0.076/kWh. Provider Defendants deny the remaining allegations contained in Paragraph 66 of the Third Amended Complaint.

67. Provider Defendants admit that Plaintiff Veilleux became an Electricity Maine customer sometime in 2012 and that the standard offer rate for CMP residential and small commercial consumers on June 28, 2017 was \$.06691/kWh. Provider Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 67 of the Third Amended Complaint and, therefore, deny the same.

68. Provider Defendants deny the allegations contained in Paragraph 68 of the Third Amended Complaint.

69. Provider Defendants deny the allegations contained in Paragraph 69 of the Third Amended Complaint.

70. Provider Defendants deny the allegations contained in Paragraph 70 of the Third Amended Complaint.

CLASS ACTION ALLEGATIONS

71. Paragraph 71 of the Third Amended Complaint states legal conclusions to which no response is required. To the extent Paragraph 71 of the Third Amended Complaint includes factual allegations, they are denied.

72. Paragraph 73 of the Third Amended Complaint states legal conclusions to which no response is required. To the extent Paragraph 72 of the Third Amended Complaint includes factual allegations, they are denied.

73. Provider Defendants deny the allegations contained in Paragraph 73 of the Third Amended Complaint.

74. Provider Defendants deny that there are numerous questions of law and fact common to the Plaintiffs and the putative class.

75. Provider Defendants deny the allegations contained in Paragraph 75 of the Third Amended Complaint.

76. Provider Defendants deny the allegations contained in Paragraph 76 of the Third Amended Complaint.

77. Provider Defendants deny the allegations contained in Paragraph 77 of the Third Amended Complaint.

78. Provider Defendants deny the allegations contained in Paragraph 78 of the Third Amended Complaint.

79. Provider Defendants deny the allegations contained in Paragraph 79 of the Third Amended Complaint.

80. Provider Defendants deny the allegations contained in Paragraph 80 of the Third Amended Complaint.

81. Paragraph 81 of the Third Amended Complaint does not include factual allegations requiring responsive pleading. Further answering, Provider Defendants request that the Court decline to certify a class in this case.

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

82. Provider Defendants repeat and reallege their responses to Paragraphs 1 through 81 as if fully set forth herein.

83. Provider Defendants deny the allegations contained in Paragraph 83 of the Third Amended Complaint.

A. Enterprise

84. Provider Defendants deny the allegations contained in Paragraph 84 of the Third Amended Complaint.

85. Provider Defendants deny the allegations contained in Paragraph 85 of the Third Amended Complaint.

86. Provider Defendants deny the allegations contained in Paragraph 86 of the Third Amended Complaint.

87. Provider Defendants deny the allegations contained in Paragraph 87 of the Third Amended Complaint.

88. Provider Defendants deny the allegations contained in Paragraph 88 of the Third Amended Complaint.

89. Provider Defendants deny the allegations contained in Paragraph 89 of the Third Amended Complaint.

90. Provider Defendants deny the allegations contained in Paragraph 90 of the Third Amended Complaint.

91. Provider Defendants deny the allegations contained in Paragraph 91 of the Third Amended Complaint.

92. Provider Defendants admit that Emile Clavet and Kevin Dean are natural persons. Provider Defendants deny the remaining allegations contained in Paragraph 92 of the Third Amended Complaint.

93. Provider Defendants admit that Defendant Spark HoldCo is a distinct corporate entity and that it is a Texas-based energy company. Provider Defendants deny the remaining allegations contained in Paragraph 93 of the Third Amended Complaint.

94. Provider Defendants deny the allegations contained in Paragraph 94 of the Third Amended Complaint.

95. Provider Defendants deny the allegations contained in Paragraph 95 of the Third Amended Complaint.

96. Provider Defendants deny the allegations contained in Paragraph 96 of the Third Amended Complaint.

97. Provider Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 97 of the Third Amended Complaint and, therefore, deny the same.

98. Provider Defendants deny the allegations contained in Paragraph 98 of the Third Amended Complaint.

99. Provider Defendants deny the allegations contained in Paragraph 99 of the Third Amended Complaint.

B. Specific Acts of Mail and Wire Fraud

100. Provider Defendants deny the allegations contained in Paragraph 100 of the Third Amended Complaint.

101. Provider Defendants deny the allegations contained in Paragraph 101 of the Third Amended Complaint.

a. Fraudulent Advertising

102. Provider Defendants deny the allegations contained in Paragraph 102 of the Third Amended Complaint.

103. Provider Defendants deny the allegations contained in Paragraph 103 of the Third Amended Complaint.

104. Provider Defendants deny the allegations contained in Paragraph 104 of the Third Amended Complaint.

105. Provider Defendants deny the allegations contained in Paragraph 105 of the Third Amended Complaint.

106. Provider Defendants deny the allegations contained in Paragraph 106 of the Third Amended Complaint.

107. Provider Defendants deny the allegations contained in Paragraph 107 of the Third Amended Complaint.

b. Fraudulent Door-to-Door Sales

108. Provider Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 108 of the Third Amended Complaint and, therefore, deny the same.

109. Provider Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 109 of the Third Amended Complaint and, therefore, deny the same.

110. Provider Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 110 of the Third Amended Complaint and, therefore, deny the same.

c. Omissions During the Renewal Process

111. Provider Defendants deny the allegations contained in Paragraph 111 of the Third Amended Complaint.

112. Provider Defendants deny the allegations contained in Paragraph 112 of the Third Amended Complaint.

113. Provider Defendants deny the allegations contained in Paragraph 113 of the Third Amended Complaint.

114. Provider Defendants deny the allegations contained in Paragraph 114 of the Third Amended Complaint.

115. Provider Defendants deny the allegations contained in Paragraph 115 of the Third Amended Complaint.

116. Provider Defendants deny the allegations contained in Paragraph 116 of the Third Amended Complaint.

117. Provider Defendants deny the allegations contained in Paragraph 117 of the Third Amended Complaint.

118. Provider Defendants deny the allegations contained in Paragraph 118 of the Third Amended Complaint.

119. Provider Defendants deny the allegations contained in Paragraph 119 of the Third Amended Complaint.

120. Provider Defendants deny the allegations contained in Paragraph 120 of the Third Amended Complaint.

121. Provider Defendants deny the allegations contained in Paragraph 121 of the Third Amended Complaint.

122. Provider 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.” Provider Defendants deny the remaining allegations in Paragraph 122 of the Third Amended Complaint.

123. Provider Defendants deny the allegations in Paragraph 123 of the Third Amended Complaint. The standard offer rate for CMP residential and small commercial customers in October 2014 and December 2014 was \$0.075603

124. Provider 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.” Provider Defendants deny the remaining allegations in Paragraph 124 of the Third Amended Complaint.

C. Pattern of Racketeering

125. Provider Defendants deny the allegations contained in Paragraph 125 of the Third Amended Complaint.

126. Provider Defendants deny the allegations contained in Paragraph 126 of the Third Amended Complaint.

127. Provider Defendants deny the allegations contained in Paragraph 127 of the Third Amended Complaint.

128. Provider Defendants deny the allegations contained in Paragraph 128 of the Third Amended Complaint.

129. Provider Defendants deny the allegations contained in Paragraph 129 of the Third Amended Complaint.

130. Provider Defendants deny the allegations contained in Paragraph 130 of the Third Amended Complaint.

131. Provider Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 131 of the Third Amended Complaint and, therefore, deny the same.

132. Provider Defendants deny the allegations contained in Paragraph 132 of the Third Amended Complaint.

133. Provider Defendants deny the allegations contained in Paragraph 133 of the Third Amended Complaint.

134. Provider Defendants deny the allegations contained in Paragraph 134 of the Third Amended Complaint.

D. Injury

135. Provider Defendants deny the allegations contained in Paragraph 135 of the Third Amended Complaint.

136. Provider Defendants deny the allegations contained in Paragraph 136 of the Third Amended Complaint.

137. Provider Defendants deny the allegations contained in Paragraph 137 of the Third Amended Complaint.

138. Provider Defendants deny the allegations contained in Paragraph 138 of the Third Amended Complaint.

139. Paragraph 139 of the Third Amended Complaint does not include factual allegations requiring responsive pleading. Further answering, Provider Defendants request that

the Third Amended Complaint be dismissed and that they be awarded their costs and such other further relief as may be just and equitable.

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

140. Provider Defendants repeat and reallege their responses to Paragraphs 1 through 140 as if fully set forth herein.

141. Provider Defendants deny the allegations contained in Paragraph 141 of the Third Amended Complaint.

142. Provider Defendants deny the allegations contained in Paragraph 142 of the Third Amended Complaint.

143. Provider Defendants deny the allegations contained in Paragraph 143 of the Third Amended Complaint.

144. Provider Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 144 of the Third Amended Complaint and, therefore, deny the same.

145. Provider Defendants deny the allegations contained in Paragraph 145 of the Third Amended Complaint.

146. Provider Defendants deny the allegations contained in Paragraph 146 of the Third Amended Complaint.

147. Provider Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 147 of the Third Amended Complaint and, therefore, deny the same.

148. Provider Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 148 of the Third Amended Complaint and, therefore, deny the same.

149. Provider Defendants deny the allegations contained in Paragraph 149 of the Third Amended Complaint.

150. Provider Defendants deny the allegations contained in Paragraph 150 of the Third Amended Complaint.

151. Provider Defendants deny the allegations contained in Paragraph 151 of the Third Amended Complaint.

152. Provider Defendants deny the allegations contained in Paragraph 152 of the Third Amended Complaint.

153. Provider Defendants deny the allegations contained in Paragraph 153 of the Third Amended Complaint.

154. Provider Defendants deny the allegations contained in Paragraph 154 of the Third Amended Complaint.

155. Paragraph 155 of the Third Amended Complaint states a legal conclusion to which no response is required. To the extent Paragraph 155 of the Third Amended Complaint includes factual allegations, they are denied.

156. Provider Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 156 of the Third Amended Complaint and, therefore, deny the same.

157. Provider Defendants deny the allegations contained in Paragraph 157 of the Third Amended Complaint.

158. Paragraph 159 of the Third Amended Complaint does not include factual allegations requiring responsive pleading. Further answering, Provider Defendants request that the Third Amended Complaint be dismissed and that they be awarded their costs and such other further relief as may be just and equitable.

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

159. Provider Defendants repeat and reallege their responses to Paragraphs 1 through 158 as if fully set forth herein.

160. Provider Defendants deny the allegations contained in Paragraph 160 of the Third Amended Complaint.

161. Provider Defendants deny the allegations contained in Paragraph 161 of the Third Amended Complaint.

162. Provider Defendants deny the allegations contained in Paragraph 162 of the Third Amended Complaint.

163. Provider Defendants deny the allegations contained in Paragraph 163 of the Third Amended Complaint.

164. Provider Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 164 of the Third Amended Complaint and, therefore, deny the same.

165. Paragraph 165 of the Third Amended Complaint does not include factual allegations requiring responsive pleading. Further answering, Provider Defendants request that the Third Amended Complaint be dismissed and that they be awarded their costs and such other further relief as may be just and equitable.

COUNT IV

UNJUST ENRICHMENT

166. Provider Defendants repeat and reallege their responses to Paragraphs 1 through 165 as if fully set forth herein.

167. Provider Defendants deny the allegations contained in Paragraph 167 of the Third Amended Complaint.

168. Provider Defendants deny the allegations contained in Paragraph 168 of the Third Amended Complaint.

169. Provider Defendants deny the allegations contained in Paragraph 169 of the Third Amended Complaint.

170. Paragraph 170 of the Third Amended Complaint does not include factual allegations requiring responsive pleading. Further answering, Provider Defendants request that the Third Amended Complaint be dismissed and that they be awarded their costs and such other further relief as may be just and equitable.

COUNT V CIVIL CONSPIRACY

171. Provider Defendants repeat and reallege their responses to Paragraphs 1 through 170 as if fully set forth herein.

172. Provider Defendants deny the allegations contained in Paragraph 172 of the Third Amended Complaint.

173. Provider Defendants deny the allegations contained in Paragraph 173 of the Third Amended Complaint.

174. Provider Defendants deny the allegations contained in Paragraph 174 of the Third Amended Complaint.

175. Provider Defendants deny the allegations contained in Paragraph 175 of the Third Amended Complaint.

176. Paragraph 176 of the Third Amended Complaint does not include factual allegations requiring responsive pleading. Further answering, Provider Defendants request that the Third Amended Complaint be dismissed and that they be awarded their costs and such other further relief as may be just and equitable.

JURY DEMAND

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

WHEREFORE, Defendants Provider Power, LLC, Kevin Dean and Emile Clavet request the Third Amended Complaint be dismissed and that they be awarded their costs and such other further relief as may be just and equitable.

STATEMENT OF ADDITIONAL DEFENSES

FIRST DEFENSE

The Third Amended Complaint, in whole or in part, fails to state a claim on which relief can be granted.

SECOND DEFENSE

The Third Amended Complaint and each purported claim for relief therein is barred, in whole or in part, by the doctrine of *res judicata*.

THIRD DEFENSE

The Third Amended Complaint and each purported claim for relief therein is barred, in whole or in part, by the doctrine of collateral estoppel.

FOURTH DEFENSE

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.

FIFTH DEFENSE

Plaintiffs lack standing to assert the claims stated, including the claims of the putative class.

SIXTH DEFENSE

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.

SEVENTH DEFENSE

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 the named RICO Defendants conducted the alleged enterprise beyond conducting the business in the normal course.

EIGHTH DEFENSE

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.

NINTH DEFENSE

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.

TENTH DEFENSE

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 the named RICO Defendants knowingly joined a conspiracy to violate the Racketeer Influenced and Corrupt Organizations Act or that Plaintiffs were injured by the commission of an overt act in furtherance of the conspiracy.

ELEVENTH DEFENSE

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.

TWELFTH DEFENSE

The claims of Plaintiffs and putative class members are barred, in whole or in part, because any alleged misrepresentation made by the Provider Defendants was made in good faith and for legitimate business reasons.

THIRTEENTH DEFENSE

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

FOURTEENTH DEFENSE

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

FIFTEENTH DEFENSE

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

SIXTEENTH DEFENSE

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

SEVENTEENTH DEFENSE

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

EIGHTEENTH DEFENSE

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

NINETEENTH DEFENSE

The equitable claims and requests for injunctive relief of Plaintiffs and putative class members are barred because if they have a remedy at all, Plaintiffs and putative class members have an adequate remedy at law.

TWENTIETH DEFENSE

The claims of Plaintiffs and putative class members are barred by the applicable statute of limitations and other limitations periods.

TWENTY-FIRST DEFENSE

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 the Provider Defendants.

TWENTY-SECOND DEFENSE

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

TWENTY-THIRD DEFENSE

The contract claims of Plaintiffs and putative class members are barred by Maine's economic loss doctrine.

TWENTY-FOURTH DEFENSE

The claims of the Plaintiffs and putative class members 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.

TWENTY-FIFTH DEFENSE

The claims of Plaintiffs and putative class members are barred, in whole or in part, by the doctrine of *in pari delicto*.

TWENTY-SIXTH DEFENSE

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 the Provider Defendants' conduct alleged to violate the Act.

TWENTY-SEVENTH DEFENSE

Plaintiffs and putative class members' claims are barred, in whole or in part, because the court lacks subject-matter jurisdiction and the Maine Public Utilities Commission has primary jurisdiction.

TWENTY-EIGHTH DEFENSE

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

TWENTY-NINTH DEFENSE

The Provider Defendants have 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.

THIRTIETH DEFENSE

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

THIRTY-FIRST DEFENSE

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 the Provider Defendants, 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

Dated: January 11, 2019

/s/ Melissa A. Hewey

Melissa A. Hewey

Amy K. Olfene

*Attorneys for Defendants Provider Power,
LLC, Kevin Dean, and Emile Clavet*

DRUMMOND WOODSUM

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CERTIFICATE OF SERVICE

I hereby certify that on January 11, 2019, I electronically filed the above Answer with the Clerk of the Court using the CM/ECF system, which will send notification of such filings to all counsel of record.

Dated: January 11, 2019

/s/ Melissa A. Hewey _____

Melissa A. Hewey
*Attorney for Defendants Provider Power,
LLC, Kevin Dean, and Emile Clavet*

DRUMMOND WOODSUM

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