

LEE BECK LAWRENCE,  
individually, and as a representative  
of all others similarly situated,  
Plaintiff,

V.

PEDERNALES ELECTRIC  
COOPERATIVE, INC., et al.  
Defendants.

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IN THE DISTRICT COURT

OF TRAVIS COUNTY, TEXAS

200<sup>th</sup> JUDICIAL DISTRICT

Filed in The District Court  
of Travis County, Texas

JUN 14 2007

At  
Amalia Rodriguez-Mendoza, Clerk

DEFENDANTS' ORIGINAL ANSWER

TO THE HONORABLE COURT:

Pedernales Electric Cooperative, Inc., Bennie Fuelberg, Will Dahmann, W.W. Burnett, E.B. Price, O.C. Harmon, R.B. Felts, Val Smith, Vi Cloud, Barry Adair, Kenneth W. Kennedy, Lamont Ramage, Libby A. Linebarger, Ola Armstrong, Blas Tenorio, Rusty Allen, Dr. Stuart M. Nunnally, D.L. Ruff, Robert A. Reed, Jr., and Barbara A. Shaffer, Defendants in the above cause, file this Original Answer to Plaintiff's Original Petition, and by way of answer show:

1.

This lawsuit has no merit whatsoever. It is based on a fundamental misunderstanding of the facts, both as to how cooperatives are run generally and as to how the Pedernales Electric Cooperative is run in particular. It is brought not only against the Cooperative, but also against the dedicated members of the Cooperative's board and management, who are threatened with financial ruin as a result of Plaintiff's exorbitant damages claims. Among the potential beneficiaries of the suit are Plaintiff's lawyers, who seek legal fees that would be assessed against the very Cooperative that Plaintiff is supposedly trying to help. One of those lawyers is the Plaintiff's husband — raising a conflict of interest between Plaintiff and the members of the

Cooperative whom she purports to represent. What is more, Plaintiff seeks certification of a mandatory class, which would force all current and former members of the Cooperative to be party to her lawsuit — even if they do not want to be. Plaintiff, who has never bothered to run for a seat on the board, is trying to nullify the decisions and policies implemented by a board democratically elected by the members — decisions and policies that have enabled the Cooperative to maintain great financial stability, that have enabled the Cooperative to provide low rates and outstanding customer service, and that have resulted in the Cooperative's rating by J.D. Power as the number one ranked utility in the State in customer satisfaction. Defendants will vigorously defend this lawsuit because they believe that the members deserve to have their Cooperative run by those whom the members have elected to run it — not by a disgruntled individual seeking an end-run around the democratic process by which the Cooperative has successfully been run for the past 70 years.

2.

Defendants deny generally every allegation contained in Plaintiff's Original Petition and demand strict proof thereof by a preponderance of the evidence.

3.

Defendants deny that this action may be maintained as a class action and assert that this action should not be certified.

4.

Defendants deny that Plaintiff is a proper class representative.

5.

Defendants deny that there are questions of law and fact that are common to the class defined by Plaintiff.

6.

Defendants deny that the relief sought by Plaintiff is common to the class defined by Plaintiff.

7.

Defendants deny that Plaintiff's claims are typical of the claims of the class defined by Plaintiff.

8.

Defendants deny that Plaintiff will fairly and adequately protect the interests of the class defined by Plaintiff.

9.

Defendants deny that this cause must be maintained as a class action to prevent establishment of incompatible standards of conduct, and further deny that adjudications with respect to individual class members would as a practical matter be dispositive of the interests of non-party members or would substantially impair or impede their ability to protect their interests.

10.

Defendants deny that all of the claims alleged by Plaintiff were caused by the action or omission of Defendants.

11.

Defendants deny that a class action is superior to other available alternative methods of adjudication of Plaintiff's claims.

12.

Defendants deny that Plaintiff has properly defined the class.

13.

Defendants deny that Plaintiff's counsel will fairly and adequately represent the interests of the class.

14.

Defendants deny that Plaintiff has the legal capacity to bring the claims here alleged in her alleged capacity as an individual member of the Cooperative.

15.

The individual Defendants deny that they are liable in the capacity in which they are sued in this cause.

16.

Plaintiff's claims are barred by laches.

17.

Plaintiff's claims are barred by the statute of limitations.

18.

Plaintiff has waived any right to bring these claims.

19.

Plaintiff has ratified and acquiesced in the conduct that is the basis of Plaintiff's claims.

20.

Plaintiff is estopped from seeking or obtaining the recovery that she seeks.

21.

Plaintiff's claims are barred by the doctrine of res judicata and collateral estoppel.

22.

Plaintiff's claims are barred by the business judgment rule.

23.

To the extent that Plaintiff is seeking exemplary damages, Plaintiff has failed to plead facts sufficient under the law to justify an award of exemplary damages.

24.

The imposition of exemplary damages in this case would violate Defendants' rights to procedural due process under both the Fourteenth Amendment to the United States Constitution and Article I Section 17 of the Constitution of the State of Texas, and would additionally violate Defendants' right to substantive due process under the Fourteenth Amendment to the United States Constitution.

25.

Plaintiff's claims for exemplary damages are barred, in whole or in part, by the Constitution of the United States and are subject to all limiting and "capping" provisions of Texas law.

26.

Plaintiff has failed to allege conduct warranting imposition of exemplary damages under Texas law.

27.

Any law, statute, or other authority purporting to permit the recovery of exemplary damages in this case is unconstitutional, facially and as applied, to the extent that, without limitation, it: (1) lacks constitutionally sufficient standards to guide and restrain a jury's discretion in determining whether to award exemplary damages and/or the amount, if any; (2) is void for vagueness in that it fails to provide adequate notice as to what conduct will result in exemplary damages; (3) permits recovery of exemplary damages based on conduct that complied

with applicable law, or conduct that was not directed toward Plaintiff or did not cause damages to Plaintiff; (4) permits recovery of exemplary damages in an amount that is not reasonable and proportionate to the amount of harm, if any, to Plaintiff and to the amount of compensatory damages, if any; (5) permits jury consideration of net worth or other financial information relating to any Defendant; (6) lacks constitutionally sufficient standards to be applied by the trial court in post-verdict review of any exemplary damages awards; and (7) lacks constitutionally sufficient standards for appellate review of exemplary damages awards.

28.

Plaintiff's claims for exemplary damages are subject to the limitations and requirements of Chapter 41 of the Texas Civil Practice and Remedies Code, including the cap on exemplary damages set out in Section 41.008(b).

WHEREFORE, Defendants Pedernales Electric Cooperative, Inc., Bennie Fuelberg, Will Dahmann, W.W. Burnett, E.B. Price, O.C. Harmon, R.B. Felts, Val Smith, Vi Cloud, Barry Adair, Kenneth W. Kennedy, Lamont Ramage, Libby A. Linebarger, Ola Armstrong, Blas Tenorio, Rusty Allen, Dr. Stuart M. Nunnally, D.L. Ruff, Robert A. Reed, Jr., and Barbara A. Shaffer ask the Court to dismiss this suit or render judgment that Plaintiff take nothing, assess costs against Plaintiff, award attorney's fees and expenses to Defendants, and award Defendants, collectively and/or individually, all other relief, general and/or specific, at law and in equity, to which Defendants may be justly entitled. Defendants also ask for their costs and attorney's fees pursuant to Section 37.009 of the Texas Civil Practice and Remedies Code.

Respectfully submitted,

CLARK, THOMAS & WINTERS  
A Professional Corporation

By: 

JOANNE SUMMERHAYS

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**ATTORNEYS FOR DEFENDANTS**

VERIFICATION

STATE OF TEXAS            ]  
COUNTY OF BLANCO        ]

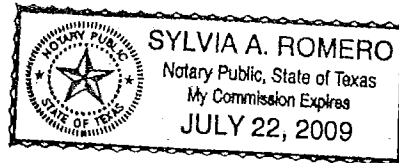
Before me, the undersigned Notary Public, on this day personally appeared E.B. Price, who, after being duly sworn, stated under oath that he is a Director of Pedernales Electric Cooperative, Inc. and the Vice-President of its Board, and that he is authorized to execute this verification on behalf of Defendant Pedernales Electric Cooperative, Inc. and all individual Defendants in this action; that he has read the above Defendants' Original Answer; that he makes this statement both in his capacity as an individual Defendant and as authorized representative for all other named Defendants; and that every statement contained in paragraphs 14-15 of Defendants' Original Answer is within his personal knowledge and is true and correct.

E.B. Price  
E.B. Price

SUBSCRIBED AND SWORN TO BEFORE ME ON June 14, 2007.

Sylvia A. Romero  
(Signature)

Sylvia A. Romero  
(Signed name)



Notary Public in and for the State of Texas

My commission expires July 22, 2009.

CERTIFICATE OF SERVICE

I hereby certify, by my signature below, that a true and correct copy of the foregoing has been served via facsimile and/or certified mail, return receipt requested on the 14<sup>th</sup> day of June, 2007 to:

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JOANNE SUMMERHAYS