

UNDER SEAL

CIVIL CASE COVER SHEET

UNDER SEAL

Check one: ☐ CHANCERY COURT ☒ CIRCUIT COURT

Docket NO. 14C 809 R# 257153

Date July 3, 2014

Attorney of Record: Wilson C. von Kessler, II; Jay Michael Barber; Allen S.C. Willingham

I. Origin ☒ Original Proceeding ☐ Case Reopened ☐ Counter-claim ☐ Cross-claim ☐ 3rd Party Claim ☐ Intervening Claim
☐ Answer/Initial Responsive Pleading ☐ Other (Specify) _____

II. Type of Action (Check one)

Domestic Relations

☐ 361 Paternity ☐ 362 Legitimation ☐ 363 Adoption ☐ 364 Surrender
☐ 371 Divorce with minor children ☐ 372 Divorce without minor children ☐ 381 Order of Protection ☐ 391 Interstate Support-Incoming
☐ 392 Interstate Support-Outgoing

☐ 401 Other Domestic Relations (Specify) _____

General Civil

☒ 461 Contract/Debt ☐ 462 Specific Performance ☐ 471 Damages/Torts ☐ 481 Real Estate Matter
☐ 491 Workers Compensation ☐ 501 Probate ☐ 511 Juvenile Court Appeal ☐ 512 General Sessions Appeal
☐ 513 Appeal from Admin. Hearing ☐ 571 Conservatorship ☐ 572 Guardianship ☐ 573 Trust

☒ 581 Miscellaneous General Civil (Specify) Tennessee False Claims Act - Qui Tam

Other ☐ 541 Judicial Hospitalization

Petition for: (Reopened Cases)

☐ 381 Order of Protection ☐ 382 Contempt ☐ 383 Residential Parenting/No Child Support
☐ 384 Residential Parenting/Child Support ☐ 385 Child Support ☐ 387 Wage Assignment Hearing
☐ 551 Other _____

III. Total amount sued for \$10,000,000.00 _____ Specific type of damages or relief sought False Claims Damages

Statutory authority for suit, if any Tenn. Code Ann. 4-18-104(c)

IV. Check one: ☐ Affidavit to proceed *in forma pauperis* ☒ Cost Bond (Copy Attached) _____

V. JURY DEMAND (Check YES only if demanded in complaint) ☒ YES ☐ NO

VI. RELATED CASES (if any) Docket NO. _____ Judge _____
Date filed _____ Status _____

VII. PLAINTIFF/PETITIONER INFORMATION (List additional parties on supplemental form.)

1. Name: Lepard Donald Eugene
Last First Middle
☐ AKA ☐ DBA ☐ BNF
DOB 2-12-1960 Driver's License # 061236261

N/A
COMPANY NAME

3346 Reflecting Drive
ADDRESS
Chattanooga TN 37415
CITY STATE ZIP

EMPLOYER _____

ADDRESS _____

CITY _____ STATE _____ ZIP _____

Wilson C. von Kessler, II 018946
ATTORNEY BPR #
Market & Major 735 Broad Street, Suite 402
ADDRESS
Chattanooga TN 37402
CITY STATE ZIP
423-756-6700
PHONE

VIII. DEFENDANT/RESPONDENT INFORMATION (List additional parties on supplemental form.)

1. Name _____
Last First Middle
☐ AKA ☐ DBA ☐ BNF
DOB _____ Driver's License # _____

ELECTRIC POWER BOARD OF CHATTANOOGA

COMPANY NAME

UNDER SEAL
ADDRESS

NO SERVICE, CONTACT OR COMMUNICATION
CITY STATE ZIP

UNDER SEAL -
EMPLOYER

NO SERVICE, CONTACT OR COMMUNICATION
ADDRESS

ADDRESS _____

CITY _____ STATE _____ ZIP _____

TYPE OF SERVICE REQUIRED NONE - UNDER SEAL - MAILED TO ATTORNEY GENERAL BY PLAINTIFF'S COUNSEL

☐ Out of County Sheriff ☐ Publication (specify) _____

☐ Local Sheriff ☐ Other (specify) _____

☐ Secretary of State Special Instructions _____

☐ Comm. Of Ins.

IX. ASSOCIATED PARTY (Uninsured Motorist Carrier) INFORMATION

1. Name _____ Address _____



ORIGINAL

CIRCUIT COURT OF HAMILTON COUNTY
STATE OF TENNESSEE

FILED IN OFFICE
2014 JUL -3 AM 9:49
KARLA L. THOMPSON, CLERK
BY KAN

THE CITY OF CHATTANOOGA,
STATE OF TENNESSEE,
and *ex rel.* DON LEPARD, Qui Tam
Plaintiff,

JURY DEMAND

Plaintiffs,

Case No.: 14 C 809

v.

FILED UNDER SEAL PURSUANT to
TENNESSE FALSE CLAIMS ACT, 4-18-
101 et seq.

ELECTRIC POWER BOARD OF
CHATTANOOGA,

**DO NOT PLACE IN PRESS BOX
OR ENTER ON PUBLICLY
ACCESSIBLE SYSTEM**

Defendant.

**FALSE CLAIMS ACT COMPLAINT
AND DEMAND FOR JURY TRIAL**

1. *Qui Tam Plaintiff, Don Lepard*, brings this action on behalf of The City of Chattanooga, Tennessee, and on his own behalf as Qui Tam Plaintiff, against Defendant, Electric Power Board of Chattanooga (hereinafter "EPB"), for contract damages, treble damages and civil penalties for its violations of the Tennessee False Claims Act, Tenn. Code Ann. § 4-18-104(c)(2) *et seq.*

2. *Service upon Attorney General and Reporter:* As required by the Tennessee False Claims Act, Tenn. Code Ann. § 4-18-104(c)(3), the Qui Tam Plaintiff has on the same day as the complaint is filed, served by mail with "return receipt requested" the Tennessee Attorney General and reporter with a copy of this Complaint and a written disclosure of substantially all material evidence and information the Qui Tam Plaintiff possesses.

3. *Summary Statement of this False Claims Act Complaint.*

- (a) This action arises from Defendant's sale of electric power to the City of Chattanooga for operation of its municipal lighting. As shown herein, EPB engaged in a regular practice of submitting to the City invoices or bills for electrical power which were known by EPB to be inflated and based on inaccurate information contained in the bills themselves. By contract, EPD was required to bill for certain flat rates based on electric energy consumption applicable to the lights actually in service. Contrary to its contract obligations, EPB submitted bills reciting that the electric power for which the bills were submitted was power used in certain lights deployed in the municipal lighting system. These recitations, contained in every bill submitted by EPB, were incorrect and materially false.
- (b) The energy charges of EPB for municipal lighting in Chattanooga are supposed to be based on defined rates for the lights, with some lights consuming higher kilowatts of energy than others, therefore producing higher billings for their energy consumption. The lights for which the bills were purportedly submitted were, in material respects, different from the lights which were in fact installed, in place, and in operation during each of the billing periods. If the billings had been based upon the lights actually installed and in use for each billing period over the last twenty (20) years, the amount of the billing would have been materially different, and materially less than the billings which were in fact presented. The bills were false in that they billed excessively and contrary to EPB's contract, for energy consumed by inefficient old lights which had long since been retired and taken out of service by EPB.

4. *The Disclosure Statement.* The disclosure statement served by Qui Tam Plaintiff on the Attorney General details and includes material evidence known to the Qui Tam Plaintiff as a result of Mr. Lepard's independent inquiry into the matters set forth herein. The evidence establishes the existence of Defendant's erroneous billings and calculates the extent of the excessive billing.

5. The Disclosure statement also establishes those facts, documentary evidence of facts, communications and history of this matter, including the following:

- (a) Mr. Lepard's development of evidence and conclusions regarding the EPB erroneous billings and disclosure by Mr. Lepard to the City of Chattanooga of the facts and analysis accomplished by the Mr. Lepard which demonstrated the amount of the erroneous billings of EPB. This evidence also shows that Mr. Lepard was the original source of the information which led to some public disclosure of the issue of overbilling by EPB;
- (b) Qui Tam Plaintiff's analysis and mathematical calculation of the amounts of the False Claims of EPB;
- (c) the admissions, denials and other statements of position of EPB and documents and evidence obtained from EPB;
- (d) an audit by the City of Chattanooga into matters raised by the Mr. Lepard's disclosures and results of that audit, including the Mayor of Chattanooga's written demand for full disclosure by EPB;
- (e) documents relating to EPB's claim of a right of offset against its liabilities for overbilling based on amounts allegedly underbilled for other matters, including the analysis of Mr. Lepard's specially retained consulting accountant

demonstrating that EPB's claim of underbilling is not supported by facts, by EPB's practices, by generally accepted accounting practices adopted by EPB, or by EPB's financial statements, records and reports;

- (f) records of statements made in the press by the City and EPB as a result of the Mr. Lepard's disclosures; and
- (g) other material evidence submitted in compliance with the requirements of the Tennessee False Claims Act, including evidence that false billing by EPB was a practice that extended beyond Chattanooga, and likely affected all of EPB's municipal lighting accounts, likely including overbillings nearly equal to those experienced in the case of Chattanooga.

6. Because the disclosures to the Attorney General and the appropriate prosecutorial attorney in Chattanooga may include attorney-client communications and work product of Qui Tam Plaintiff's attorney(s), and may be submitted to the Attorney General and reporter and to the Chattanooga prosecutorial attorney in their capacity as potential co-counsel in the litigation, the Qui Tam Plaintiff understands these disclosures are made subject to a claim of confidentiality and privilege.

Jurisdiction and Venue

7. This action arises under the Tennessee False Claims Act, Tenn. Code Ann. § 4-18-101 *et seq.*

8. Jurisdiction and venue are proper in this Court pursuant to Tenn. Code Ann. § 4-18-104(c)(2) and because the acts recited herein and proscribed by the Tennessee False Claims Act occurred substantially in Hamilton County, Tennessee, and because at all relevant times

Defendant maintained its principal and subsidiary offices and transacted business regularly in Hamilton County, Tennessee.

9. The damages sought in this action by the Plaintiff and Qui Tam Plaintiff from the Defendant exceed \$10,000,000.

Parties and Background Facts

10. *Qui Tam Plaintiff, Don Lepard.* Mr. Lepard is a local entrepreneur who has lived in Chattanooga for more than 36 years. He came to Chattanooga in 1978 to play football for UTC. In 2014, he was named the Distinguished Alumnus from the university. [Exhibit X]

11. *Mr. Lepard's background.* After graduation in 1982, Mr. Lepard stayed in Chattanooga, married his wife Kim and started his family. He worked at a long-standing company called D.M. Steward until 1997. He then started his own electronic components company – Global Manufacturing Alliance Group – and was designing EMI suppression filters for the electronic and automotive markets. He and his partner, Mack Davis, found success and hired up to 30 people to logistically manage the electronic components being made in China and shipped to the United States.

12. Like many other companies, Global Manufacturing Alliance Group suffered a tremendous financial blow in October 2008. The company saw an \$80 million sales forecast for 2009 disappear to zero in a matter of weeks. Mr. Lepard was forced to lay off his employees, but before they left, he promised he would come up with a new idea for a product that would bring back their jobs. That's a promise Don tirelessly pursued while spending a large portion of his personal wealth.

13. *Creation of Global Green Lighting LLC.* In 2009, Mr. Lepard changed the name of his components company to Global Green Lighting, LLC (hereinafter "GGL"). Through

GGL, Mr. Lepard developed the first LED street light design, and had new municipal lights manufactured in China and shipped to Chattanooga. The first place Mr. Lepard took his new lighting system was to the Electric Power Board (EPB), a utility serving the City of Chattanooga and other cities and counties of Tennessee, as well as areas within the State of Georgia. At a meeting in May of 2009, the GGL team was told, however, that EPB was not supportive of GGL's efforts to win the municipal lighting contract in Chattanooga and that EPB was not interested in reducing electric energy sales (its bread and butter) or eliminating its maintenance contracts with respect to the existing city lighting. The EPB also challenged GGL to prove that its Urban Connection Light could measure the energy reduction and report the savings to its customers. Mr. Lepard set out to answer the challenge.

14. Mr. Lepard studied and found that the best way to measure the energy savings was to put a smart meter in the lights. He also realized that a lighting control system could dim the lights down to generate even more energy savings and remotely turn them back on while in the energy reduction mode (eco mode). Mr. Lepard worked with a high technology company, Sensus, to develop the metering system.

15. *First use of GGL's Urban Connection Lighting.* In March 2011, the City of Chattanooga was having a serious crime problem in one of its most popular locations, Coolidge Park. Then Mayor Ron Littlefield contacted GGL to implement its new wireless lighting control with a power meter in the lights in Coolidge Park. The plan was to have the capacity to overpower the park with low-energy lighting when needed and also to turn them down to normal levels when appropriate. The system would also measure and report the power consumption. Mr. Lepard worked with city officials and police officers to implement a program that allowed police officers to turn the lights up to full power from their police cars. The end result of this

“beta” testing of the GGL system was that crime in Coolidge Park dropped by 100% and the energy savings was measured at 62%. Later, a 2013 Chattanooga crime report showed that the only two sectors in the City that reported a double-digit drop in crime (Echo and Bravo) were the two sectors where GGL deployed its Phase I lights in 2013. [Exhibit N]

16. The City, public safety officials and GGL were very happy with the Coolidge Park results. For its efforts, GGL was awarded the Spirit of innovation award in November 2011. [Exhibit X]

17. *The GGL contract for Urban Connection Lighting in Chattanooga.* On or about March 29, 2012, GGL undertook a contract to install its Urban Connection Light system in place of city street lights previously used in the downtown area of Chattanooga. This system is innovative, one-of-a-kind technology that manages, measures and reports energy usage to the local utility for billing and other purposes. Its energy efficient system (Lighting Luminaries) is also dramatically more efficient than prior technologies, utilizing LED lights, with advanced monitoring and other control systems. By Resolution 27032, the City Council of Chattanooga approved on March 20, 2012, the purchase of up to 27,000 lights from GGL for a complete update of Chattanooga’s municipal lighting grid. The contract was to be performed in stages, and the initial purchase amount was \$6 million for a certain downtown portion of the city. As of March 2014, \$136,165 remained unspent for the initial purchase order. 5,000 out of 6,134 lights had been successfully installed, and the system was fully operational as planned. [A complete copy of the GGL/Chattanooga contract is produced with the Disclosure Statement as Exhibit H].

18. *Mr. Lepard’s Development of knowledge and conclusions about false claims.* In the course of completing the first phase of that contract, Mr. Lepard developed detailed direct and independent knowledge of the Chattanooga street light system, and conducted and

completed significant independent investigation and analysis of the system and the prior operations and billings of the system during earlier times, going back as much as twenty (20) years. Mr. Lepard was not looking for evidence of false claims or over-billing, but needed to understand the EPB billings and power consumption numbers in order to demonstrate the power savings which his lighting system was achieving. As a result of the direct and independent knowledge he developed and his analysis of the data, he came to an understanding and appreciation of the facts recited in this Qui Tam complaint and the conclusions stated herein.

19. *Mr. Lepard's voluntary disclosure of facts and conclusions about erroneous billing of EPB, and ensuing publicity.* In the course of addressing material and appropriate issues disclosed by his inquiries, Mr. Lepard has made voluntary disclosures to EPB and to City of Chattanooga representatives (as required by the Tennessee False Claims Act) of all of the data and analysis which is included in this complaint. These disclosures, together with consideration of the continuation of GGL's contract for the second and third phases, led to some public discussion and disclosure of some, but not all, of the information and analysis set forth herein. Mr. Lepard is the original source of all such information in the public disclosures, as it was he who had directly and independently obtained knowledge of the facts and had accomplished his own independent analysis thereof. It was his report of these facts, conclusions, and responses thereto by the City and EPB which led to public interest in the matter. Notwithstanding these disclosures, EPB has denied any overbilling, and has interposed various explanations and alleged offsetting factors, all of which are incorrect and unfounded. The City has demanded full disclosure by EPB, but there is no procedure in place for judicial or administrative review or action to assure that EPB will disclose the truth. Mr. Lepard has been advised that EPB's inquiry into the claimed overbilling and claimed indebtedness to the City has been completed, but the

outcome has not been disclosed. Qui Tam Plaintiff believes that EPB will persist in its false denials. As of the date of preparation of this Complaint, EPB continues its denials.

20. *Mr. Lepard is the original source of the public information.* The facts and analysis on which the allegations herein are based, and which were the subject of public disclosure, were voluntarily provided by Mr. Lepard to the political subdivision (City of Chattanooga) and to EPB before the public disclosure and long before filing of this action. That information provided the basis and catalyst for any investigations, audits, or reports concerning these matters which followed. Thus, Mr. Lepard is the original source of any publicly disclosed information, and he has good and valid standing and right to bring this action pursuant to Tenn. Code Ann. § 4-18-104(d)(3)(A) and (B).

21. *The City of Chattanooga.* This action is brought for the benefit of, and on behalf of the City of Chattanooga, Tennessee, which is a subdivision of the State of Tennessee on behalf of which a Qui Tam Plaintiff is authorized to bring a Qui Tam action under the Tennessee False Claims Act.

22. *The Defendant, Electric Power Board of Chattanooga (EPB),* is a Tennessee corporation duly chartered, formed and operating as an electric power provider and distributor to, among others, the City of Chattanooga, with its principal office located at 10 West M.L. King Boulevard, Chattanooga, Tennessee 37402. The Defendant is subject to the jurisdiction and venue of this Court.

23. The Defendant, EPB, was established for the purpose of providing electric power to the people of the greater Chattanooga area. EPB is one of the largest non-profit corporate providers of electric power in the country. EPB serves more than 169,000 residents in a 600 square mile area that includes greater Chattanooga, as well as parts of surrounding counties

(small parts of Bledsoe, Bradley, Marion, Rhea and Sequatchie) and areas of North Georgia (portions of Catoosa, Dade and Walker). EPB is more than a non-profit power distributor, however, as it also has for-profit operations which it conducts in the field of placement, installation and use of fiber-optic communications and data transmission, video and internet systems, telecom systems and fiber-optic systems. EPB has reported that its electric sales revenue was \$457 million in 2008, and on information and belief, it has had similarly substantial, and increasing revenues in recent years. Its fiber-optic operations have involved at least \$200 million in capital and other expenditures. [Exhibit F]

Energy Overbillings by EPB

24. **How Overbilling Can Occur in EPB's Street Lighting Program.** Charges for energy consumption by EPB to its customers can be metered (actual consumption), or based on defined rates as contractually agreed upon by TVA, EPB, and the energy customer. For street lighting in the EPB domain, energy charges for street lighting are based on defined rates. The two key defined rates for street light billing are the "**Rated kWh**" for a type of fixture or light and the "**Energy charge per kWh**". The following table demonstrates the "**Rated kWh**" for the most common street lights deployed in the EPB street lighting systems:

Type of Fixture	Lamp Size Watts	Light Size	Rated kWh
Mercury Vapor or MV	175	7	71
Mercury Vapor or MV	400	20	155
Mercury Vapor or MV	700	36	270
Mercury Vapor or MV	700	140	385
Mercury Vapor or MV	1,000	60	378
High-Pressure Sodium or HPS	100	9	42
High-Pressure Sodium or HPS	150	16	61
High-Pressure Sodium or HPS	200	22	85
High-Pressure Sodium or HPS	250	19	105
High-Pressure Sodium or HPS	400	32	160

25. The "**Rated kWh**" is essentially an average estimate of the kWh or energy consumption for a light for a period of one month. It takes into account the power consumed by the light and the estimate of hours that the light will be energized.

26. The "**Energy Charge per kWh**" is contractually agreed upon by TVA, EPB, and the energy customer in the "ELECTRIC POWER BOARD OF CHATTANOOGA, OUTDOOR LIGHTING RATE—SCHEDULE LS". The contract rate will vary to correspond to increases and decreases determined by TVA, based on variations in the wholesale price of energy.

27. Under the current system, a billing can be erroneous if:

1. The wrong **Energy Charge per kWh** is used,
2. The wrong **Rated kWh** is used, or
3. The light count is wrong (lights billed that do not exist).

28. The Energy Charge per kWh is tightly controlled and subject to audit by TVA. It is the simplest component in the calculation and should be the least difficult to manage and ensure is correct.

29. During the deployment by GGL of its new LED lights in Chattanooga, on multiple occasions, it was noted that lights called out or identified on the official EPB prints did not exist. An actual count of these missing lights was not done, but investigation to establish the number can readily be determined by EPB. [Exhibit J]

30. The single biggest cause of overbilling that was uncovered by Mr. Lepard was use of the incorrect **Rated kWh** in the energy cost calculation. The primary cause of an incorrect **Rated kWh** is a misclassification, or more precisely, misidentification of the type of fixture or light actually deployed. For example, if a 400 watt mercury vapor light is included in the billing invoice in place of the 200 watt high-pressure sodium actually installed, a **Rated kWh** of 155 is included in the energy cost calculation as opposed to the correct **Rated kWh** of 85. This misidentification or misclassification would result in an overbilling of 182% for that light for the

month. At a 6.81 ¢ per kWh for the month, the overbilling for this light would be \$4.77.

[Exhibit G]

Estimated Actual Overbilling of Energy Charges by EPB

31. Prior to the Energy Crisis in 1970, the most common type of fixture used in street lighting was mercury vapor. The energy consumption of a mercury vapor light is approximately two times that of high-pressure sodium light. In order to reduce energy consumption in the street lighting program, thirty-five (35) years ago EPB started to replace MV (mercury vapor) lights with HPS (high-pressure sodium) lights. Additionally, Mr. Lepard's investigations into this matter confirmed that the replacement program was completed well over twenty (20) years ago.

[Exhibit X]

32. Even though all, or almost all of the mercury vapor lights were removed from the Chattanooga street lighting program over 20 years ago, in the July 1998 invoice to the City of Chattanooga for street light charges, EPB included 6,872 mercury vapor lights as shown in the table below:

Type of Fixture	Rated kWh	Jul-98	Oct-08	Dec-10	Jan-12	Dec-12	Dec-13	Mar-14
MV, 1000w, size 60, 378 KWH	378	22	22	22	22	22	1	1
MV, 175w, size 7, 71 KWH	71	4,020	4,020	4,020	3,949	3,895	951	957
MV, 400w, size 20, 155 KWH	155	2,641	2,641	2,641	2,583	2,534	250	248
MV, 700W, size 36, 270 KWH	270	23	23	23	23	23	3	3
MV, 700W, size 140, 385 KWH	385	166	166	166	164	159	3	3
Total Count		6,872	6,872	6,872	6,741	6,633	1,208	1,212

33. The chart above was prepared by Mr. Lepard or by his associates at his direction. The chart above is based precisely on actual data set forth in the EPB billings for the months and

years identified in the chart. In those bills, these numbers are reported. All that the chart does is to tally the numbers from the bills and present them in an organized fashion. The data for this chart may be verified, as Mr. Lepard has already done, by a review of the bills.

34. Bills including all of the billing data for Chattanooga presented in this complaint are being produced with the Disclosure Statement as Exhibit A, and those bills are incorporated herein by reference. This collection of billing data is comprised of a collection bound in a notebook, with the bills organized, tabbed and labeled, including all EPB billings to the City of Chattanooga for municipal lighting for a period including July 30, 1998, October 30, 2008, and every monthly bill from January 28, 2010 through May 30, 2014. For those same time periods, a spread sheet summarizing the data on the bills is also being produced as Exhibit B as part of the Disclosure Statement, and those spreadsheets are incorporated herein by reference.

35. There is apparently no documentation maintained by EPB to actually confirm when the Mercury Vapor lights had been replaced, but, as shown in the previous table, the count of Mercury Vapor lights on the basis of which EPB consistently billed the City of Chattanooga stayed relatively consistent until 2013, when the number drops dramatically. [Exhibit D]

36. In January, 2013, EPB began, very discreetly, a process of changing some of the billing data by reporting significant changes in the lights for which billing was being made. At the time, no explanation for these changes was given by EPB. EPB has recently referred to this as a process of "reclassifying" lights. It appears that this "reclassification" was a matter of changing the bills' identification of lights for which bills were presented. Lights which had previously been billed as higher wattage Mercury Vapor lights were "reclassified" as lower wattage HPS lights. While this was done in a way unlikely to be noted by anyone, Mr. Lepard's work on lighting replacements led to his finding these huge changes in the bills.

37. Mr. Lepard was able to observe that there was a sharp increase in the number of High Pressure Sodium lights identified as the basis for the billings, and a sharp decline in the number of Mercury Vapor lights. The decline in the number of MV lights reported in the bills from December 2012 (6,633) to December, 2013 (1,208) amounts to a correction in the identification of 5,425 lights. The bulk of the decline occurred over a fairly short interval of time. These changes occurred in a period of months. The changes in the basis for the billing was not because MV lights had been taken out of service at that time and replaced with HPS lights. The lights on the poles remained the same as they had been. The change was only a paper entry for the first time in more than 20 years, moving in the direction of a correct identification of the lights. Before that, the billings were based on enormously inaccurate and false data.

38. Mr. Lepard prepared a chart of these changes which is attached to the Disclosure Statement as Exhibit D. It is incorporated herein by reference. It represents a graph of information from EPB's bills, tracking changes in the numbers of reported mercury vapor and high pressure sodium lights from Jan. 2012 to March 2014. This makes it appear that thousands of MV lights were taken out of service and thousands of HPS lights were put into service in a very short period of time; but what the chart actually demonstrates is the fact that the charted MV lights almost certainly were not on the poles to begin with during this time frame, but had simply been falsely reported as being in service, thereby supporting the higher, erroneous billings. In fact, the MV lights had been changed out long ago, and replaced by HPS lights which, for billing purposes had long been mischaracterized and misidentified (to the financial advantage of EPB) as MV lights until these "reclassifications" occurred in 2013. The chart also shows that even after this "reclassification", the bill in March of 2014 continued to show and bill

for approximately 1,200 MV lights, with billing occurring for those lights (which almost certainly did not exist) from August 2013 through March 2014.

39. The false billings and resulting overcharges continue to this day.

40. As noted before, it was Mr. Lepard's investigation into the lighting issues which led to a conclusion that no mercury vapor lights, or only perhaps a few, existed in the Chattanooga portion of EPB's street lighting program for the entire period shown in the table above. Based on this assumption, a simple calculation of the energy overbilling for a twenty (20) year period is as follows:

Chattanooga Tennessee											
Type of Fixture	Rated KWH	Type of Fixture	Rated KWH	Rated KWH Delta	Monthly KWH over charge	MV Count	Energy Charge per KWH (Avg Est.)	Month	Annual	13 Years	20 years
Mercury Vapor, 1000w, size 60	378	HPS, 200w	85	293	5,446	22	\$ 0.068	\$ 439	\$ 5,268	\$ 52,677	\$ 105,353
Mercury Vapor 175w, size 7	71	HPS, 100w	42	29	116,580	4,020	\$ 0.068	\$ 7,939	\$ 95,269	\$ 952,692	\$ 1,905,384
Mercury Vapor, 400w, size 20	155	HPS, 200w	85	70	184,870	2,641	\$ 0.068	\$ 12,590	\$ 151,078	\$ 1,510,758	\$ 3,021,515
Mercury Vapor, 700W, size 36	270	HPS, 200w	85	185	4,255	23	\$ 0.068	\$ 290	\$ 3,477	\$ 34,772	\$ 59,544
Mercury Vapor, 700W, size 140	385	HPS, 200w	85	300	49,800	166	\$ 0.068	\$ 3,386	\$ 40,637	\$ 406,368	\$ 812,736
Total					361,951	6,872	Over Charges	\$ 24,644	\$ 295,727	\$ 2,957,266	\$ 5,914,532
Total KWH's over charged					361,951				4,343,412	58,464,356	86,868,240

41. This table uses actual billing to the City of mercury vapor light usage to the City as of July 1998. The Type of Fixtures shown in the table are those identified in the July 1998 invoice. The replacement high pressure sodium lights are assumed replacements based on matching approximately the lumen output of the mercury vapor lights. The Rated kWh is based on approved rate schedules. The Energy Charge per kWh is a reasonable approximate number. For an exact calculation of the overbillings, a more detailed analysis of each monthly invoice would be required, but these numbers are a good, solid estimate based on all information available. [See Exhibit G to the Disclosure Statement].

42. This calculation demonstrates \$5,914,532 (86,868,240 KWH's) in overcharges over twenty years. As the above chart indicates, fraudulent overcharges during the past 13 years,

may be fairly and conservatively estimated at in excess of \$3,000,000 (56,464,356 KWH's) for that period.

43. **Overbilling of other Cities.** The calculation above is an estimate of the energy charge overbillings by EPB to the City of Chattanooga for street lighting. The city of Chattanooga has approximately 26,500 of the estimated 46,000 total lights in the EPB street lighting system, including other cities. In addition to the reported 26,500 lights in the City of Chattanooga limits, there are, therefore, an estimated additional 20,000 lights in the EPB street lighting system in the other political subdivisions. Until a physical inventory count of every light in the system can be conducted, the billing misidentification of high-pressure sodium as mercury vapor lights is estimated to be in the ranges between 15% to 40% for a total average of 27% of the reported installations, based on political subdivision. Based on a review of invoices from two other subdivisions, it is apparent that the billing discrepancies likely impact all served municipalities. **If this is correct, the approximate 20 year overbilling for the EPB street lighting program is in excess of \$10 million dollars.**

44. Exhibit E of the Disclosure Statement includes two charts reflecting data from a review (directed by Mr. Lepard) of EPB billings (and charting of same) of Red Bank, Tennessee and East Ridge, Tennessee, areas whose municipal lighting is outside of the City of Chattanooga system but part of the EPB grid system. Charting of these billings (accomplished by Mr. Lepard) shows that, with substantial similarity, the same "reclassification" of MV lights by EPB in these areas occurred, and the reclassification occurred at the same time as occurred in Chattanooga. These records confirm that the MV lights described in the bills for those two areas also did not exist, but were HPS lights falsely billed as if they were MV lights. The MV lights had long ago

been replaced by HPS lights. The result was overcharges, just as occurred in Chattanooga. The pattern of overcharging is believed to be, and likely is, present in all of the cities served by EPD.

Emergence of the Evidence of False Billing

45. Mr. Lepard first noticed that the EPB mapping of lights was incorrect when work started on the relighting of the Coolidge Park project in April 2011. Mike Jones was the key person who handles all of the grid mapping for EPB. He came to Coolidge Park, and Mr. Lepard and Jones discussed what appeared to be out-dated prints at that time. It was pointed out in April 2011, that the Mercury Vapor Lights on the Mapping for River Front Street and Frazier Avenue did not exist. Mike Jones and other EPB supervisor's gathered with Mr. Lepard and instructed him to notify Mike Jones of any errors and Mike would get the prints updated and sent back to the GGL installation managers.

46. During the entire time of the deployment of GGL's new lighting system in 2013, the GGL personnel worked closely with Mike Jones to give him the updates on what was found on the poles, and Mike would make the changes to the EPB prints. Mr. Lepard also spoke to Dan Johnson, Mayor Littlefield's chief of staff in an update meeting, telling him that the inventory was going to be wrong and we would need to check the billing records for accuracy, and make sure the right lights were used for the billing. Mr. Lepard stated that the format and inaccuracy of the EPB street light billing was part of the problem encountered by GGL in the reconciliation of the new energy savings.

47. Mr. Lepard met with Jeff Cannon, Daisy Madison, and Rick Davis and gave a briefing of the lighting project on May 18, 2013. In that meeting Mr. Lepard reported that GGL was seeing a 25% inaccuracy in the mapping versus the billing, and suggested that the billing be

restructured to allow for a reconciliation of the inventory each month against the billing, in order to make sure the facility cost was adjusted properly.

48. On July 17, 2013, Mr. Lepard sent Jeff Cannon an email that said "I say this with confidence because we are finding about a 15% rate in the documentation of the 1300 lights that have been deployed. Light types wattage sizes are wrong, and in some cases the lights are missing from poles they are charging you for".

49. In July 2013, Mr. Lepard invited Rick Davis, the city Traffic engineer, to come to the Hixson (GGL) factory and see the detailed summary sheet that clearly indicated that EPB was reclassifying the Mercury Vapor Lights to the HPS categories at an alarming rate.

50. In the course of removal and replacement of thousands of lights during the first phase of its contract with the City of Chattanooga, GGL did not find a single Mercury Vapor light on the poles. Mr. Lepard has collected and maintained all of the lights removed from the poles before installation of the LED lights, and those lights are still collected and available at a warehouse at GGL's Hixson facility near Chattanooga. Photographs of those lights are produced as Exhibit I to the Disclosure Statement and are incorporated herein by reference.

51. Mr. Lepard formally met with Harold DePriest (EPB) and Dianna Bullock for the first time in Harold's penthouse conference room on September 17, 2013. The meeting was arranged by Zach Wamp at Mr. Lepard's request.

52. The meeting was friendly. Mr. DePriest and Mr. Lepard spoke kindly about each other's efforts for almost an hour. Then, Mr. Lepard explained the situation of the missing/misclassified lights to Mr. DePriest. Mr. DePriest said he did not have any idea what Mr. Lepard was talking about.

53. Mr. Lepard showed him the graphs and spread sheets which he had prepared (attached to the Disclosure statement) but Mr. Depriest still insisted that he did not know what Mr. Lepard was talking about.

54. Mr. DePriest asked Mr. Lepard to meet with David Wade, EPB's Executive VP, and Greg Eaves EPB's CFO, to explain it to them. Mr. Lepard agreed to do so.

55. Mr. Lepard met with David Wade and Greg Eaves on September 26, 2013 concerning the missing/misclassified lights.

56. Mr. Lepard also met on this subject with David Wade and Greg Eaves again on November 7, 2013.

**EPD's Motives and Actions in Avoiding the Truth and
Retaliating Against Mr. Lepard and GGL**

57. From the beginning, EPB viewed GGL and Mr. Lepard as a threat. EPB was not happy with GGL winning its bid to install an innovative lighting system in Chattanooga. Real innovation is always disruptive, and EPB represented the entrenched old guard in Chattanooga. Nevertheless, Mayor Littlefield and City officials were so impressed with the Coolidge Park results that the City decided to be the first City in the world to deploy lights that would create energy savings and enhance public safety.

58. As a result of the contract awarded to GGL, EPB lost control of Chattanooga's street lights. EPB did not want to lose control of any part of the lighting, as it was a source of substantial revenue for EPB and also represented control of the light poles and fixtures which had additional business benefits for EPB's long term plan to compete in the fiber-optics and data delivery market. The award of the contract to GGL occurred in November 23, 2011. It occurred over EPB's significant opposition.

59. GGL and Mr. Lepard predicted their LED light system would yield savings of \$36 million in energy and maintenance costs over 15 years. If the City of Chattanooga was going to save \$36 million in energy costs over 15 years, then EPB was going to lose \$36 million in sales revenue. EPB would also lose millions in depreciation that EPB was charging the City for its antiquated lighting system. This was a substantial reason for opposition of EPB to GGL and its goals and objectives.

60. Led by President Harold DePriest, the EPB attacked the GGL technology in conversations with the administration and City Council. The sniping campaign was designed to slow down the momentum of GGL and its new disruptive technology that was going to impact the EPB in a financially significant way.

61. Mr. DePriest spoke to the Mayor and City Council members cautioning them to move slowly. Heeding the warnings of one of the City's most powerful people, the Council approved the contract with GGL on March 26, 2012, but broke the \$18 million funding into phases of \$6 million each year during the next three years. A copy of the signed contract is produced with the Disclosure Statement as Exhibit H, and is incorporated herein by reference.

62. There was another reason why EPB was hostile to GGL. As part of GGL's technology, each street light had the capability to report daily its energy savings. In order to accomplish the report, a bench mark of the old existing lights had to be established. GGL's profiling of the existing lights as they were taken down was causing EPB to have concerns that its prior billing practices would be discovered. EPB leaders and personnel were aware that their billings to the City of Chattanooga for the municipal lighting were based on false identification of many of the lights, and a hard inventory would reveal the over-billing and false charges. As noted above, thousands of lights were billed as high cost old Mercury Vapor lights, when those

lights had been retired long ago. While this increased the billings and the revenue coming in for EPB, disclosure of this practice would raise issues about the propriety and legality of the practice. There would also be questions raised about whether these practices of EPB violated contracts between EPB and the City and between EPB and TVA. The practice would also likely be viewed as a violation of TVA rules and regulations.

63. EPB knew that in the course of the removal of old lights and replacement with new, highly efficient LED lights, GGL might come to appreciate that EPB plans of the Chattanooga municipal lights were not correct and that the lights on the poles were different from the lights used to calculate the overstated billings. In order to prevent this from happening and to discredit GGL, should it happen, EPD launched and implemented a plan of attack on GGL, an attack upon GGL's business relationship with the City of Chattanooga and an attack upon GGL's reputation in the municipal lighting community generally.

64. Within a week of the award of the lighting contract to GGL, the EPB began to criticize and obstruct performance of the contract. EPB informed Mayor Littlefield's Chief of Staff, Dan Johnson, that the metering technology GGL was using was not "residential grade" and the EPB would not accept it. Mr. Johnson met with Mr. Lepard and asked if he wanted to give up on the contract or could he redesign the metering to meet the residential grade specifications. Mr. Lepard accepted the challenge and agreed to deliver a residential grade meter. It took seven additional months and more than \$2 million in additional costs to make the changes. Mr. Lepard agreed to pay to the CFO the late penalties to the city for not delivering to its original commitment, even though EPB had imposed an additional requirement that was not in the agreement between the City and GGL. In October 2012, GGL delivered the new light with the meter. EPB tested it and grudgingly approved it. The qualifying engineer stated to Mr.

Lepard that the meter performed better than the residential grade meter used by the EPB on homes in Chattanooga.

65. By November, 2012, Mr. Lepard had already fulfilled his verbal commitment of duplicating a factory in China and establishing a factory in Hixson, Tennessee, all at the expense of Mr. Lepard and his company. GGL began hiring employees, buying inventory, and went into production. The first lights were delivered to the City in December 2012. However, EPB, which GGL was required to use for installation, stalled and did not begin to install the lights until April of 2013, and only then after new Mayor Andy Berke ordered them to do so. On March 22, 2013, in an interview with an local online newspaper, Mr. DePriest made a public comment on GGL, disparaging GGL as a "a relatively new company without a proven track record." Without any basis, DePriest remarked, "it is yet to be seen just how long new LED lights will last and if they are worth their high cost." He disparaged the "dimming" capabilities of the GGL system, suggesting that this might lead to more crime. [See press clippings notebook, Exhibit X, produced as part of Plaintiff's Disclosure Statement].

66. EPB required that its deployment teams be paid by the hour. GGL had originally bid the deployment at a fixed rate of \$70 per light. EPB averaged more than \$110 a light. When the Berke Administration began its evaluation of Phase I in October 2013, these additional costs from EPB were used to penalize GGL by increasing the ROI (return on investment calculations). EPB delayed the installation process and increased the installation costs that were charged to the City by the hour.

67. EPB used an installation and activity log kept secretly by the EPB third-party installation contractor to track its performance. Later, after the deployment was completed and the installers were terminated, EPB collected the notebook logs and attempted to transform them

into an illegitimate "maintenance report" that highlighted issues and raised concerns about the GGL product and performance. GGL did not have any chance to audit the report for accuracy. The report of the EPB stated that 750 (20%) of the 4,500 GGL lights installed had to be replaced. This was told to the City Council in a closed meeting in the Mayors conference room and was used as a reason not to move forward with the funding for the existing lighting replacement contract.

68. GGL spent 80 hours on the audit of the EPB maintenance report and determined there were more than 142 duplications and discrepancies. GGL reported back to the City and was allowed the opportunity to confront the EPB lighting project manager, Wendell Boring, who generated the report. Mr. Boring could not dispute one of the corrections GGL gave to him. The subject was dropped and not brought up again until the City Auditor (Stan Sewell) confirmed GGL's audit of the EPB report. EPB's raising of unfounded questions associated with its pretense of a maintenance report held up the contract approval process for at least three months.

69. After the Mayor's report, the City Council Chairman Yusuff Hakeem contacted Mr. Lepard and asked if he would accept his recommendation for an audit by the City Independent auditor. EPB reported to the Mayor a lower energy savings percentage based on unexplained stranded asset charges, and inflated installation charges. EPB had this information inserted into the Mayor's version of the return on investment (ROI), which extended the ROI to sixteen years, which was twice the original time period for pay back. This EPB information is produced as Exhibit M to the Disclosure Statement. The original winning bid proposal did not include the addition of the stranded asset charges or increased installation costs as part of the ROI.

70. The City auditor report to the City Council, based on information provided by Mr. Lepard, concluded that there is a billing discrepancy – substantial overbilling -- in the EPB's energy charges, increased installation costs, and an uncertain stranded asset charge. Yet, at a Council meeting on May 13, EPB's CEO and President personally delivered to the City its "audit of the audit" report, contending that the city auditor's report was inaccurate, and required an adjustment of the over charges of \$245,000 per year (found by the city auditor) to \$53,000 per year. EPB admitted only overcharging to the extent of \$53,000 per year. Then the EPB claimed that there was an offsetting underbilling on the facility charges that offset the overbilling. The City Auditor's reports is produced with the Disclosure Statement as Exhibit T, and the purported EPB audit of the audit is also produced with the Disclosure Statement as Exhibit T.

71. EPB knew that GGL would likely have its success measured by the energy cost savings achieved by GGL's LED system as compared with billings associated with EPB's prior lighting system.

72. EPB knew that its prior billing was based on false data, yielding overbilling which would substantially affect the calculation of the cost savings which GGL could demonstrate. But EPB did not disclose to GGL, and sought to conceal from GGL and the City, that the true energy use was less than the energy for which EPB had billed. This initial nondisclosure, and the later timed disclosure provided leverage for EPB's agenda of giving Mayor Berke false information that lead to his decision deferring or declining funding of GGL's completion of its contract with Chattanooga.

73. EPB worked hard to achieve an outcome that GGL should be denied a continuation of its contract, and that control of the lights should be returned to EPB – the wrongdoer. Having been found guilty of overbilling, EPB claimed a victory against GGL by

pressing for denial of a contract to GGL because the energy savings was less than that initially targeted based on GGL's initial estimate.

74. Mr. DePriest, President of EPB, in a recent videotaped interview [a link to the interview can be found on the first page of Exhibit X], has now claimed that EPB knew about the "misclassification" of lights and the excess billing before GGL discovered it, but EPB did nothing to change that practice until the matter was raised by Mr. Lepard . Having finally admitted some portion of the overbilling, Mr. DePriest still denies the magnitude or duration practice. As stated in an interview, he still argues that the amount of the overbilling was offset entirely by underbilling with respect to other matters. [See Clippings of press reports produced with the Disclosure Statement, Exhibit X]

75. Mr. DePriest has otherwise strained to explain or mitigate the overbilling. He has said that the overbilling was the result of mere record-keeping and paperwork mistakes. The records show, however, that there was routine misidentification of the lights being billed for, and the resulting overbilling occurred every month for at least twenty years. The false information in the bills and improperly augmented billings occurred in a uniform and consistent pattern in multiple jurisdictions (independent of Chattanooga) and always in a way that yielded false billing and revenues for EPD which were not in fact due. The regularity of the practice supports a firm conclusion that these were not mere paperwork or record keeping errors, but were the regular practice and the approved policy of EPD.

76. Mr. Lepard and GGL, as shown in this section of the Complaint, have paid a high price for their diligence and integrity in insisting upon disclosure of the truth. The award to the Qui Tam Plaintiff should, therefore, be the highest amount permissible under the statute.

**False Claim of Offsetting Underbilling
Related to Facilities Charges**

77. The management of EPB claims that, due to misclassification of high-pressure sodium lights as mercury vapor lights, EPB under-billed the City of Chattanooga for “facility charges.” They have further asserted that these under-billings offset or exceed EPB’s overbilling of Chattanooga for energy charges, and therefore, EPB owes nothing to Chattanooga due to the energy overbilling. For EPB management’s claim to be true, the facility charges assessed by EPB to Chattanooga must be dependent on the classification of the lights. They are not.

78. Based on an agreement in place between the EPB, Tennessee Valley Authority (TVA), and Chattanooga as outlined in *ELECTRIC POWER BOARD OF CHATTANOOGA OUTDOOR LIGHTING RATE—SCHEDULE LS* (Schedule) [attached to the Disclosure Statement as Exhibit F], there are two (2) methods for assessing facility charges. The first method is to apply a standard rate to the installed cost of a lighting system. The second method is to apply a fixed rate per installed light. **Part A** of the Schedule describes the first method, and applies to charges, energy and facility, for street lighting systems. **Part B** of the Schedule describes the second method and applies only to charges for outdoor lighting for individual customers.

79. If the facility charges assessed by EPB to Chattanooga were dependent on **Part B** of the Schedule, EPB management’s assertions might be correct. However, for street lighting systems, **Part A** applies, so any under-billing would require a misstatement of the standard rate or the installed cost of the lighting system.

80. **Section II of Part A** defines the Facility Charge, and calls for the application of a fixed 12.3% rate to the installed cost of the facilities devoted to street and park lighting service. The 12.3% flat rate is an “overhead” rate that includes all other costs including depreciation that

EPB incurs in delivering street lighting services to Chattanooga. *This rate (12.3%) is fixed and not subject to variation.* Therefore, this component of the facility charge calculation will not influence the determination of under-billings for facility charges. Therefore, any under-billing would be dependent on the total installed cost of the facilities devoted to street and park lighting service.

81. In a document prepared by EPB management and presented to Chattanooga, EPB confirmed the 12.3% rate as appropriate, and sought to demonstrate that their misclassification of lights resulted in a misstatement of the total installed cost of the facilities devoted to street and park lighting service.

82. EPB management prepared a schedule to demonstrate the under-billing of facility charges to Chattanooga on May 5, 2014. The Certified Public Accounting firm Mauldin & Jenkins reviewed this document prior to presenting to Chattanooga.

83. Mauldin & Jenkins issued an *Independent Accountant's Report on Applying Agreed-Upon Procedures* detailing the results of their limited review using specific "mutually agreed-upon" procedures to evaluate EPB management's assertions. Agreement of the procedures was between Mauldin & Jenkins and EPB management. Mauldin & Jenkins confirmed EPB management's assertions, but disclaimed that *"Had we performed additional procedures, other matters might have come to our attention that would have been reported to you."* The agreed upon procedures, as detailed in the report, did not include a review of the build-up of *installed cost of the lighting system*, and consequently, their report was flawed. It relied on the principal assumptions that EPB excluded the cost of the high-pressure sodium lights from the total installed cost, and relied on a facility charge method more closely related to **Part B** of the Schedule. These assumptions are false. *Part B does not apply to street lighting*

systems. EPB, under its method of accounting for fixed assets, would have included the full cost of the high-pressure sodium lights when purchased and installed. EPB uses the “composite” method for streetlights, fixtures, polls, and transformers, which would make up the majority of the installed cost of the lighting system.

84. As confirmed by the Office of Internal Audit, City of Chattanooga in an April 4, 2014 memorandum, EPB does not specifically identify the cost of assets, but uses the “composite” method of depreciating assets. The OIA (Office of Internal Audit) memorandum further reported that the OIA reviewed EPB’s records, and determined that EPB’s method of accounting meets industry standards and is acceptable.

85. Composite depreciation methods aggregate assets to reduce the recordkeeping costs of determining periodic depreciation. An average depreciation rate is determined and applied to the total cost of the composite pool for the accounting period. Under the composite method, increases in the asset pools are based on the cost of assets purchased and installed. As EPB purchased the replacement high-pressure sodium lights, these costs were added to the composite pool.

86. EPB does not specifically identify the cost of assets. The “installed cost of lighting” was calculated under GAAP by accumulating the cost of the lights with other costs in a single pool in EPB’s accounting records called Fixtures and Arms. In December 2011, this amount was reported as \$4.86 million dollars. Another pool of assets called Poles / Conductors / Etc. was reported to be approximately \$4.18 million dollars. These two pools of assets, when combined, form the “total installed cost of lighting”. The total installed cost of lighting for the Chattanooga street lighting system was reported at approximately \$9.03 million dollars in December of 2011. Applying the approved and mandated rate of 12.3% to this asset base would

yield an annual facility charge of approximately \$1.11 million dollars or \$92,604 per month. The December 2011 invoice from EPB to the City of Chattanooga shows a facility charge of \$92,873 or a difference of .29%. Therefore, the purchase cost of assets constitutes the "installed cost of lighting".

87. When high-pressure sodium lights were purchased by EPB, the cost of these lights were pooled and accounted for in Fixtures and Arms. Therefore 100% of the cost of high-pressure sodium lights was already in the "total installed cost of lighting".

88. Facility charges assessed by EPB to Chattanooga are not dependent on the classification of installed lights, but are dependent on the inclusion of costs. Reclassifying from mercury vapor to high-pressure sodium does not result in a recorded entry in EPB's general ledger, and consequently does not result in an increase in the cost of the "total installed cost of lighting". With no increase in the installed cost of lighting, there cannot be a misstatement of the facility charges assessed by EPB to Chattanooga. The claim by EPB that it under-billed Chattanooga for facility charges is false.

89. The documents referred to in this section of this Complaint are produced herewith and included in the Disclosure Statement Exhibits. They are incorporated herein by reference.

Count I : Violation of

the Tennessee False Claims Act §4-18-101 et. Seq.

for False Billing in Violation of Contract Rights

90. Defendant has submitted false claims with actual knowledge that the information supplied with the monthly bills was false and that the calculation of the amount due was also excessive.

91. Defendant has sought to justify its false billings by further and compounding falsehoods, including calculation of the extent of the false billings in a fashion which falsely understated the magnitude of the false billing.

92. Defendant has sought to justify its false billings by further and compounding falsehoods, including development of a false claim that EPB was entitled to offset from its false claims liability based on amounts which EPB claimed were under-billed to the City.

93. Defendant has knowingly made, used, or caused to be made or used a false record or statement to get false claims paid by the City, and has compounded its wrong by further false records or statements in an effort to avoid acknowledgment of its liability even after the original false claims become known.

94. Defendant has engaged in the above-described wrongful conduct with actual knowledge of the falsity of its claims, or has acted with deliberate ignorance of the truth or falsity of the information presented, or has acted in reckless disregard of the truth or falsity of the information.

95. To the extent that Defendant was in any instance a beneficiary of an inadvertent submission of a false claim to the City, and subsequently discovered the falsity of the claim, it wrongfully failed to disclose the false claim to the City within a reasonable time after discovery of the false claim.

96. By virtue of the false claims made by Defendant, Plaintiffs suffered and continue to suffer damages and therefore are entitled to treble damages under the Tennessee False Claims Act, to be determined at trial.

97. By virtue of the false and claims made by Defendant, Plaintiffs are entitled to a civil penalty of not less than \$2,500 and not more than \$10,000 for each false claim. Over a

period of twenty years, Defendant as presented false claims in monthly billings, representing at least 240 false claims.

98. By virtue of the false claims made by Defendant, Plaintiffs are entitled to the costs and attorneys' fees incurred in bringing and pursuing this action.

Demand for Relief

WHEREFORE, the Qui Tam Plaintiff respectfully requests that this Court enter judgment against Defendants and order and rule that:

- a. That the City of Chattanooga be awarded treble damages, particularly for damages resulting from the false claims of EPB alleged within this Complaint, and in violation of the Tennessee False Claims Act, and any and all damages said statute provides;
- b. That maximum permitted civil penalties be imposed for each and every false claim Defendants presented to the City of Chattanooga;
- c. That pre- and post-judgment interest be awarded, along with reasonable attorney fees, costs and expenses which the Qui Tam Plaintiff and his counsel necessarily incurred in bringing and pursuing this action;
- d. That the Qui Tam Plaintiff be awarded the maximum percentage allowable of the amount recovered by Plaintiffs, as a result of this action, pursuant to the Tennessee False Claims Act;
- e. That the Court assumes jurisdiction over the subject matter of this action, and of the named parties;
- f. That the Court retains jurisdiction over this action in order to make any and all further orders and judgments as may be necessary and proper; and

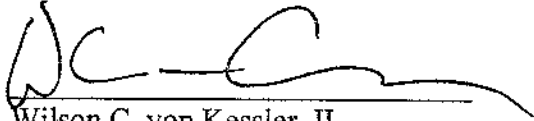
g. That the Court grants such other and further relief as Plaintiffs may be entitled to receive and this honorable Court may deem just and proper.

Demand for Jury Trial

The Qui Tam Plaintiff on behalf of himself, and the City of Chattanooga, respectfully demands a jury trial on all claims alleged herein.

Dated: July, 3, 2014.

Respectfully submitted,

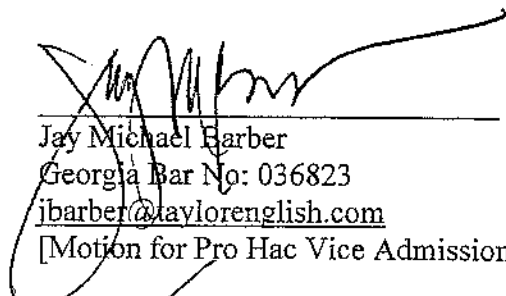


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[Motion for Pro Hac Vice Admission Pending]



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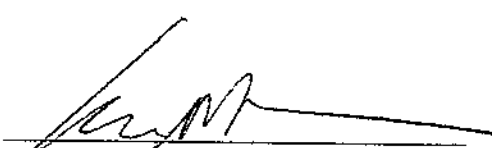
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Tennessee False Claims Act Complaint and Demand for Jury Trial has been furnished by *U.S. Mail, return receipt requested* to:

Robert E. Cooper, Jr., Attorney General
Office of the Attorney General and Reporter
State of Tennessee
Cordell Hull Building
Ground Floor
425 Fifth Avenue North
Nashville, TN 37243

on this 3rd day of July 2014.


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ORIGINAL

4

CIRCUIT COURT OF HAMILTON COUNTY
STATE OF TENNESSEE

FILED IN OFFICE
2014 JUL -3 AM 9:47
KULA T. THOMPSON, CLERK
BY HBN DC

THE CITY OF CHATTANOOGA,
STATE OF TENNESSEE,
and *ex rel.* DON LEPARD, Qui Tam
Plaintiff,

JURY DEMAND

Plaintiffs,

Case No.: 14C809

v.

FILED UNDER SEAL PURSUANT to
TENNESSE FALSE CLAIMS ACT, 4-18-
101 et seq.

ELECTRIC POWER BOARD OF
CHATTANOOGA,

**DO NOT PLACE IN PRESS BOX
OR ENTER ON PUBLICLY
ACCESSIBLE SYSTEM**

Defendant.

ORDER PLACING A SEAL ON ALL FILINGS

The Plaintiff, Don Lepard, has moved the Court for the entry of an Order placing this case under seal, as required by the Tennessee False Claims Act, Tenn. Code Ann. § 4-18-101 *et seq.*


Tenn. Code Ann. §4-18-104(c)(2) provides that "A complaint filed by a private person under this subsection (c) shall be filed in circuit or chancery court in camera and may remain under seal for up to sixty (60) days". The statute also provides that "no service shall be made on the defendant until after the complaint is unsealed." The statute further provides for service of the complaint upon the Attorney General of the State of Tennessee, and such service is being made by Plaintiff on the date of filing.

Therefore, in order for the Court's processes and the Plaintiffs to be in compliance with Tennessee law in the filing of this False Claims Act case, the complaint and all pleadings shall

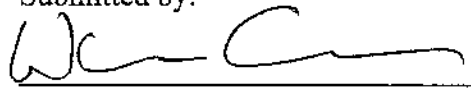
be filed under seal, as shall be any supplemental pleadings, and the nature and contents of the claims stated in the complaint shall not be communicated to the Defendant, to third parties or to the public, until such time as the seal is lifted as contemplated by the procedures set forth in the Tennessee False Claims Act. The record of the filings shall be maintained by the Clerk of Court so that the substance and nature of the claims is not disclosed to any interested party or to the public.

Plaintiff's motion is therefore, hereby granted and the pleadings and filings shall be sealed in this action until such time as the action is unsealed by the Court in accordance with law.

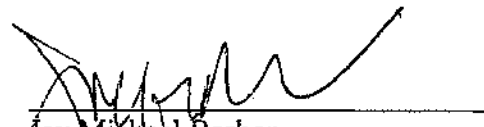
So Ordered, this 3rd day of July, 2014.


Judge,
Circuit Court of Hamilton County
State of Tennessee

Submitted by:


Wilson C. von Kessler, II
BPR No. 018946
wvonkessler@markelmajor.com

MARKEL & MAJOR
735 Broad Street, Suite 402
Chattanooga, Tennessee 37402
(423) 756-3700 (telephone)
(423) 756-6700 (facsimile)


Jay Michael Barber
Georgia Bar No: 036823
jbarber@taylorenlish.com
[Motion for Pro Hac Vice Admission Pending]

Signatures continued on following page.



Allen S. C. Willingham
Georgia Bar No. 765800
awillingham@taylorenghish.com
[Motion for Pro Hac Vice Admission Pending]

TAYLOR ENGLISH DUMA LLP
1600 Parkwood Circle
Suite 400
Atlanta, Georgia 30339
(770) 434-6868 (telephone)
(770) 434-7376 (facsimile)

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Order Placing a Seal on All Filings has been furnished by *U.S. Mail, return receipt requested* to:

Robert E. Cooper, Jr., Attorney General
Office of the Attorney General and Reporter
State of Tennessee
Cordell Hull Building
Ground Floor
425 Fifth Avenue North
Nashville, TN 37243

on this 3rd day of July, 2014.



Allen S. C. Willingham
Georgia Bar No. 765800
awillingham@taylorenghish.com

Attorney for Plaintiffs

TAYLOR ENGLISH DUMA LLP
1600 Parkwood Circle, Suite 400
Atlanta, Georgia 30339
(770) 434-6868 (telephone)
(770) 434-7376 (facsimile)



ORIGINAL

FILED IN OFFICE
2014 JUL -3 AM 9:57
BY CAULA T. THOMPSON, CLERK**FILED UNDER SEAL**IN THE CIRCUIT COURT
FOR HAMILTON
COUNTY, TENNESSEEMOTION TO APPEAR
PRO HAC VICE

PART

FILE NO. 14C809

THE CITY OF CHATTANOOGA,
STATE OF TENNESSEE, and *ex rel.*
DON LEPARD, Qui Tam Plaintiff,

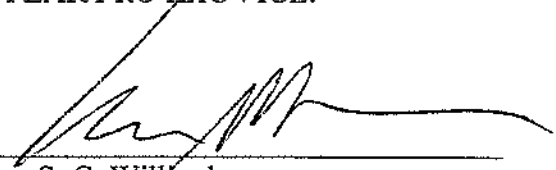
PLAINTIFF(S)

ELECTRIC POWER BOARD OF
CHATTANOOGA,

DEFENDANT(S)

Pursuant to Rule 19, *Tennessee Supreme Court Rules*, Movant seeks permission to appear *pro hac vice*, file pleadings, motions, briefs, and other papers and to fully participate in this action.

1. Movant is not licensed to practice law in Tennessee.
2. Movant resides outside Tennessee and is eligible for admission *pro hac vice* in this court.
3. Movant maintains a residence or an office for the practice of law in and is licensed, in good standing, and admitted to practice before the court of last resort in Georgia.
4. Movant has been retained by a client to appear in this action.
5. In support of this motion, Movant files herewith, **EXHIBIT A**, a certificate of good standing from the court of last resort of the licensing jurisdiction in which Movant principally practices and **EXHIBIT B**, AFFIDAVIT OF MOVANT TO APPEAR *PRO HAC VICE*.¹


Allen S. C. Willingham
Georgia Bar No. 765800**TAYLOR ENGLISH DUMA LLP**
1600 Parkwood Circle, Suite 400
Atlanta, Georgia 30339
awillingham@taylorenghish.com(770) 434-6868 (telephone)
(770) 434-7376 (facsimile)

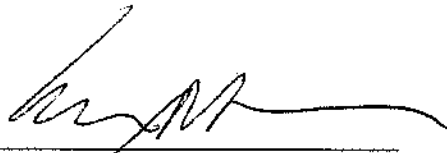
¹ CLERK & MASTER Form 164.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing *MOTION TO APPEAR PRO HAC VICE* for Attorney Allen S. C. Willingham, **filed under seal**, has been furnished by U.S. Mail, Certified Mail, Return Receipt Requested to:

Robert E. Cooper, Jr., Attorney General
Office of the Attorney General and Reporter
State of Tennessee
Cordell Hull Building
Ground Floor
425 Fifth Avenue North
Nashville, TN 37243

on this 3rd day of July, 2014.



Allen S. C. Willingham
Georgia Bar No. 765800
awillingham@taylorenghish.com

TAYLOR ENGLISH DUMA LLP
1600 Parkwood Circle, Suite 400
Atlanta, Georgia 30339
(770) 434-6868 (telephone)
(770) 434-7376 (facsimile)

EXHIBIT A



Supreme Court
State of Georgia
STATE JUDICIAL BUILDING
Atlanta 30334

HUGH P. THOMPSON, CHIEF JUSTICE
P. HARRIS HINES, PRESIDING JUSTICE
ROBERT BENHAM
CAROL W. HUNSTEIN
HAROLD D. MELTON
DAVID E. NAHMAS
KEITH R. BLACKWELL
JUSTICES

THÉRÈSE S. BARNES, CLERK
JEAN RUSKELL, REPORTER

June 25, 2014

FILED IN OFFICE
2014 JUL -3 AM 9:57
LAULA T. THOMPSON, CLERK
BY HB DC

I hereby certify that Allen S. Willingham, Esq., was admitted on the 4th day of October, 1979, as a member of the bar of the Supreme Court of Georgia, the highest court of this State; and, since that date he has been and is now a member of this bar in good standing, as appears from the records and files in this office.

Witness my signature and the seal of this Court
hereto affixed the day and year first above written.

Therese S Barnes, Clerk

EXHIBIT B

IN THE CIRCUIT COURT FOR HAMILTON COUNTY, TENNESSEE	AFFIDAVIT OF MOVANT TO APPEAR PRO HAC VICE	PART FILE NO. 14C809
THE CITY OF CHATTANOOGA, STATE OF TENNESSEE, and <i>ex rel.</i> <u>DON LEPARD, Qui Tam Plaintiff,</u> <div style="text-align: right;">PLAINTIFF(S)</div>		ELECTRIC POWER BOARD OF CHATTANOOGA, <div style="text-align: right;">DEFENDANT(S)</div>
STATE OF TENNESSEE COUNTY OF HAMILTON }		Pursuant to Rule 19(d), <i>Tennessee Supreme Court Rules</i> , Affiant, being duly sworn, deposes and says:
1. MOVANT		
1.1 My full name is Allen Sherrod Cutts Willingham		
1.2 My residence address is 3520 Ridgewood Road, NW, Atlanta, GA 30327		
1.3 My office address is TAYLOR, ENGLISH, DUMA, LLP 1600 PARKWOOD CIRCLE, SUITE 400, ATLANTA GA 30339		
1.4 The name(s) of the client(s) I seek to represent is/are: Don Lepard, Qui Tam Plaintiff on behalf of City of Chattanooga		
2. JURISDICTIONS I AM NOW LICENSED IN OR HAVE EVER BEEN PREVIOUSLY LICENSED IN ARE:		
Jurisdiction	Admission Date	Bar Number
Georgia	1979	765800
		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> Yes <input type="checkbox"/> No
3. WITHIN THE PRECEDING 3 YEARS <input checked="" type="checkbox"/> one		
3.1 <input checked="" type="checkbox"/> I have not been admitted or sought admission <i>pro hac vice</i> in any trial or appellate court of Tennessee.		
3.2 <input type="checkbox"/> I have been admitted or sought to be admitted <i>pro hac vice</i> in a trial or appellate court of Tennessee. The full name or style of each case in which I have, the date of any such admission, or the date of any such motion that was filed but not granted, and the status of any such case in which I was admitted, is:		
4. PRIOR ADMISSION <i>PRO HAC VICE</i> <input checked="" type="checkbox"/> one		
4.1 <input checked="" type="checkbox"/> I have never been denied admission <i>pro hac vice</i> by any court in any jurisdiction.		
4.2 <input type="checkbox"/> I have been denied admission <i>pro hac vice</i> . A full description of the matter, including the full name or style of the case is:		

FILED IN OFFICE
 JUL 14 2014
 BY [Signature]
 9:57

5. PRIOR REVOCATION OF *PRO HAC VICE* ✓ one

5.3 X I have never had an admission *pro hac vice* revoked by any court in any jurisdiction.

5.4 ☐ I have had an admission *pro hac vice* revoked. A full description of the matter, including the full name or style of the case is:

6. PRIOR DISCIPLINARY MATTERS ✓ one

6.1 X I have never been disciplined or sanctioned by the Board of Professional Responsibility of the Supreme Court of Tennessee, by any similar lawyer disciplinary agency in any jurisdiction, or by any similar lawyer disciplinary authority (including, for example, any United States District Court).

6.2 ☐ I have been disciplined or sanctioned by the Board of Professional Responsibility of the Supreme Court of Tennessee, or by a similar lawyer disciplinary agency in another jurisdiction, or by a similar lawyer disciplinary authority (including, for example, any United States District Court). A full description of the circumstances, including the full name or style of the matter is:

7. PENDING DISCIPLINARY MATTERS ✓ one

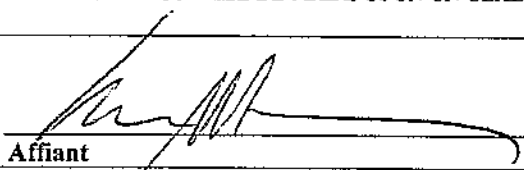
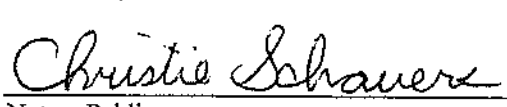
7.1 X There are no disciplinary actions or investigations concerning my conduct pending before the Board of Professional Responsibility of the Supreme Court of Tennessee, before any similar lawyer disciplinary agency in any jurisdiction, or before any similar lawyer disciplinary authority (including, for example, any United States District Court).

7.2 ☐ There are disciplinary actions or investigations concerning my conduct pending before the Board of Professional Responsibility of the Supreme Court of Tennessee, before a similar lawyer disciplinary agency in another jurisdiction, or before a similar lawyer disciplinary authority (including, for example, any United States District Court). A full description of the circumstances, including the full name or style of the matter is:

8. COURT RULES AND CONDUCT

8.1 I am familiar with the Tennessee Rules of Professional Conduct and the rules governing the proceedings of this court.

8.2 I consent to the disciplinary jurisdiction of the Board of Professional Responsibility of the Supreme Court of Tennessee and the courts of Tennessee in any matter arising out of my conduct in this proceeding, and I agree to be bound by the Tennessee Rules of Professional Conduct and any other rules of conduct applicable to lawyers generally admitted in Tennessee.

9. The lawyer with whom I am associated in accordance with Rule 19(g) is:		
9.1 Wilson C. von Kessler, II	Markel & Major	9.2 BPR # 018946
9.3 735 Broad Street, Suite 402, Chattanooga, TN 37402		
9.4 Telephone Number	423-756-3700	9.5 Fax Number 423-756-6700
10. BOARD OF PROFESSIONAL RESPONSIBILITY FEES		
10.1 I have paid all fees required by Tennessee Supreme Court Rule 19 in connection with this motion.		
11. OTHER INFORMATION SUPPORTING AFFIANT'S ADMISSION (Optional)		
12. CERTIFICATION		
THIS IS AN ACTION FILED UNDER SEAL WITHOUT SERVICE – TENNESSEE CODE ANN. § 4-18-101 ET. SEQ. SERVICE HAS BEEN MADE ON THE ATTORNEY GENERAL, AND OTHER SERVICE WILL BE MADE UPON UN-SEALING BY THE COURT.		
Further, Affiant saith not.		
 Affiant		
Sworn to and subscribed before me this <u>2nd</u> day of <u>July</u> , 20 <u>14</u>		
My Commission expires: <u>11-24-2017</u>		 Notary Public
SEAL		



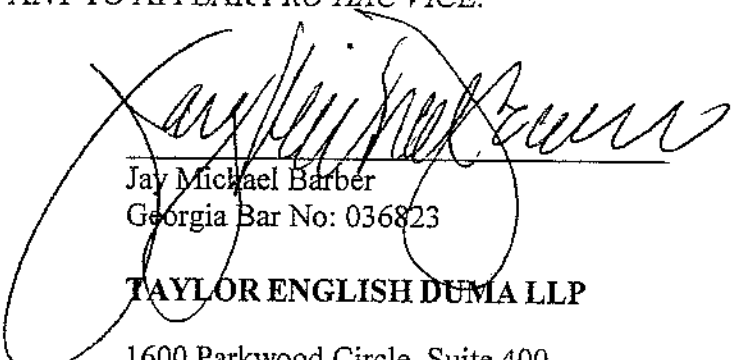
ORIGINAL

FILED UNDER SEAL

FILED IN OFFICE
2014 JUL -3 AM 9:55
BY KLBN
COURT CLERK

IN THE CIRCUIT COURT FOR HAMILTON COUNTY, TENNESSEE		MOTION TO APPEAR PRO HAC VICE	PART FILE NO. <u>14C809</u>
THE CITY OF CHATTANOOGA, STATE OF TENNESSEE, and <i>ex rel.</i> <u>DON LEPARD, Qui Tam Plaintiff</u>		ELECTRIC POWER BOARD OF <u>IL</u> CHATTANOOGA, DEFENDANT(S)	
Pursuant to Rule 19, <i>Tennessee Supreme Court Rules</i> , Movant seeks permission to appear <i>pro hac vice</i> , file pleadings, motions, briefs, and other papers and to fully participate in this action.			

1. Movant is not licensed to practice law in Tennessee.
2. Movant resides outside Tennessee and is eligible for admission *pro hac vice* in this court.
3. Movant maintains a residence or an office for the practice of law in and is licensed, in good standing, and admitted to practice before the court of last resort in **Georgia**.
4. Movant has been retained by a client to appear in this action.
5. In support of this motion, Movant files herewith, **EXHIBIT A**, a certificate of good standing from the court of last resort of the licensing jurisdiction in which Movant principally practices and **EXHIBIT B**, AFFIDAVIT OF MOVANT TO APPEAR *PRO HAC VICE*.¹


Jay Michael Barber
Georgia Bar No: 036823

TAYLOR ENGLISH DUMA LLP

1600 Parkwood Circle, Suite 400
Atlanta, Georgia 30339
jbarber@taylorenlish.com

(770) 434-6868 (telephone)
(770) 434-7376 (facsimile)


¹ CLERK & MASTER Form 164.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing *MOTION TO APPEAR PRO HAC VICE* for Attorney Jay Michael Barber, **filed under seal**, has been furnished by U.S. Mail, Certified Mail, Return Receipt Requested to:

Robert E. Cooper, Jr., Attorney General
Office of the Attorney General and Reporter
State of Tennessee
Cordell Hull Building
Ground Floor
425 Fifth Avenue North
Nashville, TN 37243

on this 3rd day of July 2014.


Jay Michael Barber
Georgia Bar No: 036823
jbarber@taylorenghish.com

Attorney for Plaintiffs

TAYLOR ENGLISH DUMA LLP
1600 Parkwood Circle, Suite 400
Atlanta, Georgia 30339
(770) 434-6868 (telephone)
(770) 434-7376 (facsimile)

EXHIBIT A



HUGH P. THOMPSON, CHIEF JUSTICE
P. HARRIS HINES, PRESIDING JUSTICE
ROBERT BENHAM
CAROL W. HUNSTEIN
HAROLD D. MELTON
DAVID E. NAHMIA
KEITH R. BLACKWELL
JUSTICES

Supreme Court
State of Georgia
STATE JUDICIAL BUILDING
Atlanta 30334

THÉRÈSE S. BARNES, CLERK
JEAN RUSKELL, REPORTER

June 25, 2014

I hereby certify that Jay M. Barber, Esq., was admitted on the 16th day of February, 1984, as a member of the bar of the Supreme Court of Georgia, the highest court of this State; and, since that date he has been and is now a member of this bar in good standing, as appears from the records and files in this office.

Witness my signature and the seal of this Court
hereto affixed the day and year first above written.

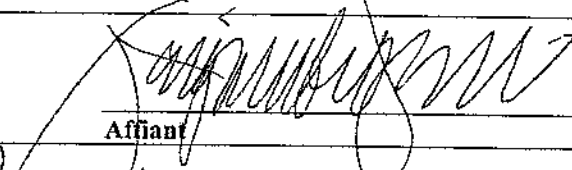
Therese S Barnes, Clerk

EXHIBIT B

FILED IN OFFICE
 DATE/TIME 7-3-14
 PAULA T. THOMPSON, CLERK
 BY H. [Signature] D.C.

IN THE CIRCUIT COURT FOR HAMILTON COUNTY, TENNESSEE	AFFIDAVIT OF MOVANT TO APPEAR PRO HAC VICE	PART FILE NO. 14 C 809
THE CITY OF CHATTANOOGA, STATE OF TENNESSEE, and <i>ex rel.</i> <u>DON LEPARD, Qui Tam Plaintiff,</u>		ELECTRIC POWER BOARD OF CHATTANOOGA,
PLAINTIFF(s)		DEFENDANT(s)
STATE OF TENNESSEE COUNTY OF HAMILTON		Pursuant to Rule 19(d), <i>Tennessee Supreme Court Rules</i> , Affiant, being duly sworn, deposes and says:
1. MOVANT		
1.1 My full name is JAY MICHAEL BARBER		
1.2 My residence address is 3650 Paces Ferry Road, NW, Atlanta, Georgia 30327		
1.3 My office address is TAYLOR, ENGLISH, DUMA, LLP 1600 PARKWOOD CIRCLE, SUITE 400, ATLANTA GA 30339		
1.4 The name(s) of the client(s) I seek to represent is/are: Don Lepard, Qui Tam Plaintiff on behalf of City of Chattanooga		
2. JURISDICTIONS I AM NOW LICENSED IN OR HAVE EVER BEEN PREVIOUSLY LICENSED IN ARE:		
Jurisdiction	Admission Date	Bar Number
Georgia	1983	036823
		X Yes <input type="checkbox"/> No
		<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> Yes <input type="checkbox"/> No
3. WITHIN THE PRECEDING 3 YEARS <input checked="" type="checkbox"/> one		
3.1 <input type="checkbox"/> I have not been admitted or sought admission <i>pro hac vice</i> in any trial or appellate court of Tennessee.		
3.2 X I have been admitted or sought to be admitted <i>pro hac vice</i> in a trial or appellate court of Tennessee. The full name or style of each case in which I have, the date of any such admission, or the date of any such motion that was filed but not granted, and the status of any such case in which I was admitted, is: Thomas and Amy Sinkewicz vs. Bryan and Amy Snyder and Arrow Exterminators, Inc., Circuit Court Hamilton County, Tennessee; CAFN 10C1318; Order entered 3-7-2011 ; case is closed.		
4. PRIOR ADMISSION <i>PRO HAC VICE</i> <input checked="" type="checkbox"/> one		
4.1 X I have never been denied admission <i>pro hac vice</i> by any court in any jurisdiction.		
4.2 <input type="checkbox"/> I have been denied admission <i>pro hac vice</i> . A full description of the matter, including the full name or style of the case is:		

5. PRIOR REVOCATION OF <i>PRO HAC VICE</i> ✓ one
<p>5.3 <input checked="" type="checkbox"/> I have never had an admission <i>pro hac vice</i> revoked by any court in any jurisdiction.</p> <p>5.4 <input type="checkbox"/> I have had an admission <i>pro hac vice</i> revoked. A full description of the matter, including the full name or style of the case is:</p>
6. PRIOR DISCIPLINARY MATTERS ✓ one
<p>6.1 <input checked="" type="checkbox"/> I have never been disciplined or sanctioned by the Board of Professional Responsibility of the Supreme Court of Tennessee, by any similar lawyer disciplinary agency in any jurisdiction, or by any similar lawyer disciplinary authority (including, for example, any United States District Court).</p> <p>6.2 <input type="checkbox"/> I have been disciplined or sanctioned by the Board of Professional Responsibility of the Supreme Court of Tennessee, or by a similar lawyer disciplinary agency in another jurisdiction, or by a similar lawyer disciplinary authority (including, for example, any United States District Court). A full description of the circumstances, including the full name or style of the matter is:</p>
7. PENDING DISCIPLINARY MATTERS ✓ one
<p>7.1 <input checked="" type="checkbox"/> There are no disciplinary actions or investigations concerning my conduct pending before the Board of Professional Responsibility of the Supreme Court of Tennessee, before any similar lawyer disciplinary agency in any jurisdiction, or before any similar lawyer disciplinary authority (including, for example, any United States District Court).</p> <p>7.2 <input type="checkbox"/> There are disciplinary actions or investigations concerning my conduct pending before the Board of Professional Responsibility of the Supreme Court of Tennessee, before a similar lawyer disciplinary agency in another jurisdiction, or before a similar lawyer disciplinary authority (including, for example, any United States District Court). A full description of the circumstances, including the full name or style of the matter is:</p>
8. COURT RULES AND CONDUCT
<p>8.1 I am familiar with the Tennessee Rules of Professional Conduct and the rules governing the proceedings of this court.</p> <p>8.2 I consent to the disciplinary jurisdiction of the Board of Professional Responsibility of the Supreme Court of Tennessee and the courts of Tennessee in any matter arising out of my conduct in this proceeding, and I agree to be bound by the Tennessee Rules of Professional Conduct and any other rules of conduct applicable to lawyers generally admitted in Tennessee.</p>

9. The lawyer with whom I am associated in accordance with Rule 19(g) is:		
9.1 Wilson C. von Kessler, II	Markel & Major	9.2 BPR # 018946
9.3 735 Broad Street, Suite 402, Chattanooga, TN 37402		
9.4 Telephone Number	423-756-3700	9.5 Fax Number 423-756-6700
10. BOARD OF PROFESSIONAL RESPONSIBILITY FEES		
10.1 I have paid all fees required by Tennessee Supreme Court Rule 19 in connection with this motion.		
11. OTHER INFORMATION SUPPORTING AFFIANT'S ADMISSION (Optional)		
12. CERTIFICATION		
<p>THIS IS AN ACTION FILED UNDER SEAL WITHOUT SERVICE – TENNESSEE CODE ANN. § 4-18-101 ET. SEQ. SERVICE HAS BEEN MADE ON THE ATTORNEY GENERAL, AND OTHER SERVICE WILL BE MADE UPON UN-SEALING BY THE COURT.</p>		
Further, Affiant saith not.		
 _____ Affiant		
Sworn to and subscribed before me this <u>2nd</u> day of <u>July</u> , 20 <u>14</u>		
My Commission expires: <u>11-24-2017</u>		
_____ Notary Public		
SEAL		



ORIGINAL

CIRCUIT COURT OF HAMILTON COUNTY
STATE OF TENNESSEE

THE CITY OF CHATTANOOGA,
STATE OF TENNESSEE,
and *ex rel.* DON LEPARD, Qui Tam
Plaintiff,

Plaintiffs,

v.

ELECTRIC POWER BOARD OF
CHATTANOOGA,

Defendant.

JURY DEMAND

Case No.: 14C809

FILED UNDER SEAL PURSUANT to
TENNESSE FALSE CLAIMS ACT, 4-18-
101 et seq.

DO NOT PLACE IN PRESS BOX
OR ENTER ON PUBLICLY
ACCESSIBLE SYSTEM

**IN CAMERA MOTION AND BRIEF FOR ENTRY OR
AN ORDER PLACING THE CASE UNDER SEAL**

The Plaintiff, Don Lepard, hereby moves the Court for the entry of an Order placing this case under seal, as required by the Tennessee False Claims Act, Tenn. Code Ann. § 4-18-101 *et seq.*

Tenn. Code Ann. §4-18-104(c)(2) provides that "A complaint filed by a private person under this subsection (c) shall be filed in circuit or chancery court in camera and may remain under seal for up to sixty (60) days. No service shall be made on the defendant until after the complaint is unsealed." The statute further provides for service of the complaint upon the Attorney General of the State of Tennessee, and such service is being made by Plaintiff on the date of filing.

FILED IN OFFICE
2014 JUL -3 AM 9:54
KELLA E. THOMPSON, CLERK
BY HBN DC

Wherefore, in order to be in compliance with Tennessee law in the filing of this False Claims Act action, Plaintiff moves the Court in Camera for entry of an Order sealing the action until such time as the action is unsealed in accordance with law.

Dated: July 3, 2014.

Respectfully submitted,

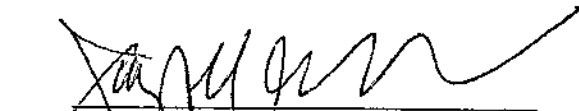


Wilson C. von Kessler, II

BPR No. 018946

wvonkessler@markelmajor.com

MARKEL & MAJOR
735 Broad Street, Suite 402
Chattanooga, Tennessee 37402
(423) 756-3700 (telephone)
(423) 756-6700 (facsimile)

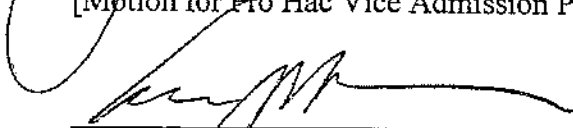


Jay Michael Barber

Georgia Bar No. 036823

jbarber@taylorenghish.com

[Motion for Pro Hac Vice Admission Pending]



Allen S. C. Willingham

Georgia Bar No. 765800

awillingham@taylorenghish.com

[Motion for Pro Hac Vice Admission Pending]

TAYLOR ENGLISH DUMA LLP
1600 Parkwood Circle
Suite 400
Atlanta, Georgia 30339
(770) 434-6868 (telephone)
(770) 434-7376 (facsimile)

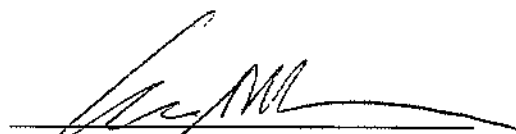
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing In Camera Motion and Brief for Entry or
An Order Placing the Case Under Seal has been furnished by *U.S. Mail, return receipt
requested to:*

Robert E. Cooper, Jr., Attorney General
Office of the Attorney General and Reporter
State of Tennessee
Cordell Hull Building
Ground Floor
425 Fifth Avenue North
Nashville, TN 37243

on this 3rd day of July, 2014.


Allen S. C. Willingham
Georgia Bar No. 765800
awillingham@taylorenghish.com

Attorney for Plaintiffs

TAYLOR ENGLISH DUMA LLP
1600 Parkwood Circle, Suite 400
Atlanta, Georgia 30339
(770) 434-6868 (telephone)
(770) 434-7376 (facsimile)

CIRCUIT COURT OF HAMILTON COUNTY
STATE OF TENNESSEE

14 JUL 23 PM 1:45

THE CITY OF CHATTANOOGA
and *ex rel.* DON LEPARD, Qui Tam
Plaintiff,

PAULA T. THOMPSON, CLERK

BY Kh DC

Plaintiffs,

Case No.: 14C809

II

v.

FILED UNDER SEAL PURSUANT to
TENNESSE FALSE CLAIMS ACT,
4-18-101 et seq.

ELECTRIC POWER BOARD OF
CHATTANOOGA,

DO NOT PLACE IN PRESS BOX
OR ENTER ON PUBLICLY
ACCESSIBLE SYSTEM

Defendant.

ORDER GRANTING ADMISSION OF
ALLEN S. C. WILLINGHAM PRO HAC VICE

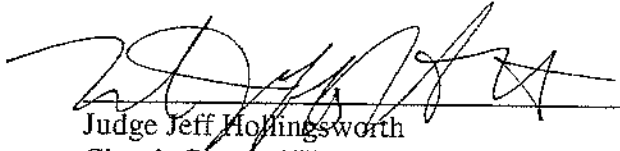
At a session of said Court held in the City of Chattanooga, County of Hamilton, State of Tennessee, this ____ day of July, 2014.

PRESENT: The Honorable Jeff Hollingsworth
Circuit Court Judge

Based on the Motion to Appear Pro Hac Vice submitted on behalf of Plaintiffs, The City of Chattanooga and *ex rel.* Don Lepard, Qui Tam Plaintiff,

IT IS ORDERED that Allen S.C. Willingham be admitted to practice as attorney before this Court for the specific purpose of representing Plaintiffs, The City of Chattanooga and *ex rel.* Don Lepard, Qui Tam Plaintiff, in this matter.

So Ordered, this 23^d day of July, 2014.


Judge Jeff Hollingsworth
Circuit Court of Hamilton County
State of Tennessee

Submitted by:

By:


Wilson C. von Kessler, II

BPR No. 018946

wvonkessler@markelmajor.com

MARKEL & MAJOR

735 Broad Street, Suite 402

Chattanooga, Tennessee 37402

(423) 756-3700 (telephone)

(423) 756-6700 (facsimile)

By:


Jay Michael Barber

Georgia Bar No: 036823

jbarber@taylorenghish.com

Allen S. C. Willingham

Georgia Bar No. 765800

awillingham@taylorenghish.com

TAYLOR ENGLISH DUMA, LLP

1600 Parkwood Circle, Suite 400

Atlanta, Georgia 30339

(770) 434-6868 (telephone)

(770) 434-7376 (facsimile)

Attorneys for Plaintiffs

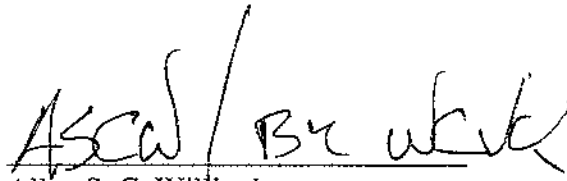
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing *Order Granting Admission of Allen S. C. Willingham Pro Hac Vice* has been furnished by U.S. Mail and e-mail to:

Albert Partee, Esq.
Office of the Attorney General and Reporter
State of Tennessee
Cordell Hull Building
Ground Floor
425 Fifth Avenue North
Nashville, TN 37243

Wade A. Hinton, City Attorney
City of Chattanooga
City Hall Annex
Second Floor
100 E. 11th Street
Chattanooga, TN 37402

on this 21st day of July, 2014.

A handwritten signature in black ink, appearing to read 'ASCA / Br white', written over a horizontal line.

Allen S. C. Willingham
Georgia Bar No. 765800
awillingham@taylorenghish.com

Attorney for Plaintiffs

TAYLOR ENGLISH DUMA LLP
1600 Parkwood Circle, Suite 400
Atlanta, Georgia 30339
(770) 434-6868 (telephone)
(770) 434-7376 (facsimile)

CIRCUIT COURT OF HAMILTON COUNTY FILED IN OFFICE
STATE OF TENNESSEE

14 JUL 23 PM 1:45

THE CITY OF CHATTANOOGA
and *ex rel.* DON LEPARD, Qui Tam
Plaintiff,

PAULA T. THOMPSON, CLERK

BY Ku DC

Plaintiffs,

Case No.: 14C809

II

v.

FILED UNDER SEAL PURSUANT to
TENNESSE FALSE CLAIMS ACT,
4-18-101 et seq.

ELECTRIC POWER BOARD OF
CHATTANOOGA,

**DO NOT PLACE IN PRESS BOX
OR ENTER ON PUBLICLY
ACCESSIBLE SYSTEM**

Defendant.

ORDER GRANTING ADMISSION OF
JAY MICHAEL BARBER PRO HAC VICE

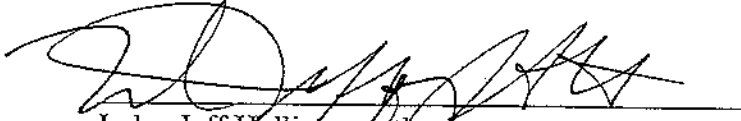
At a session of said Court held in the City of Chattanooga, County of Hamilton, State of
Tennessee, this ____ day of July, 2014.

PRESENT: The Honorable Jeff Hollingsworth
Circuit Court Judge


Based on the Motion to Appear Pro Hac Vice submitted on behalf of Plaintiffs, The City
of Chattanooga and *ex rel.* Don Lepard, Qui Tam Plaintiff,

IT IS ORDERED that Jay Michael Barber be admitted to practice as attorney before this
Court for the specific purpose of representing Plaintiffs, The City of Chattanooga and *ex rel.* Don
Lepard, Qui Tam Plaintiff, in this matter.

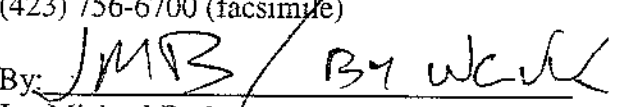
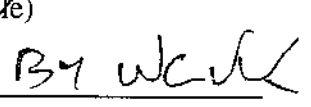
So Ordered, this 23rd day of July, 2014.


Judge Jeff Hollingsworth
Circuit Court of Hamilton County
State of Tennessee

Submitted by:

By: 
Wilson C. von Kessler, II
BPR No. 018946
wvonkessler@markelmajor.com

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By:  By 
Jay Michael Barber
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jbarber@taylorenghish.com

Allen S. C. Willingham
Georgia Bar No. 765800
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Atlanta, Georgia 30339
(770) 434-6868 (telephone)
(770) 434-7376 (facsimile)

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

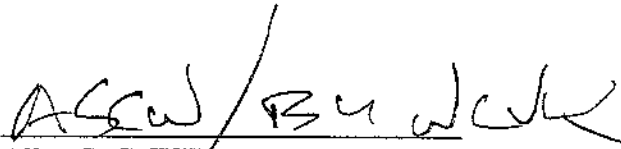
I HEREBY CERTIFY that the foregoing *Order Granting Admission of Jay Michael Barber*

Pro Hac Vice has been furnished by U.S. Mail and e-mail to:

Albert Partee, Esq.
Office of the Attorney General and Reporter
State of Tennessee
Cordell Hull Building
Ground Floor
425 Fifth Avenue North
Nashville, TN 37243

Wade A. Hinton, City Attorney
City of Chattanooga
City Hall Annex
Second Floor
100 E. 11th Street
Chattanooga, TN 37402

on this 21ST day of July, 2014.


Allen S. C. Willingham
Georgia Bar No. 765800
awillingham@taylorenghish.com

Attorney for Plaintiffs

TAYLOR ENGLISH DUMA LLP
1600 Parkwood Circle, Suite 400
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CIRCUIT COURT OF HAMILTON COUNTY
STATE OF TENNESSEE

THE CITY OF CHATTANOOGA
and *ex rel.* DON LEPARD, Qui Tam
Plaintiff,

Plaintiffs,

Case No.: 14C809

v.

FILED UNDER SEAL PURSUANT to
TENNESSE FALSE CLAIMS ACT,
4-18-101 et seq.

ELECTRIC POWER BOARD OF
CHATTANOOGA,

**DO NOT PLACE IN PRESS BOX
OR ENTER ON PUBLICLY
ACCESSIBLE SYSTEM**

Defendant.

**NOTICE OF CITY OF CHATTANOOGA'S ELECTION NOT TO PROCEED, NOTICE
OF MR. LEPARDS DESIRE TO PROCEED, AND MOTION AND BRIEF TO LIFT THE
SEAL AND COMMENCE SERVICE**

The Qui Tam Plaintiff, Don Lepard, though his counsel, with the consent of the Chattanooga City Attorney, hereby advises the Court that The City of Chattanooga, though its counsel, Mr. Wade Hinton, has advised counsel for Mr. Lepard that the City elects not to intervene or proceed with the Qui Tam action. This election is afforded by Tenn. Code Ann. § 4-18-104(c)(7)(B) which provides as follows: "Within forty-five (45) days after the attorney general and reporter forwards the complaint and written disclosure pursuant to subdivision (c)(7)(A), the prosecuting authority may elect to intervene and proceed with the action in which case the seal shall be lifted and the action would be served by the prosecutorial authority. Alternatively, the prosecuting authority may "notify the court that it declines to proceed with the

action, in which case the seal shall be lifted and the qui tam plaintiff shall have the right to conduct the action.” Tenn. Code Ann. §4-18-104(c)(7)(D)(ii).

Under the law, the City, through its prosecutorial authority (the City Attorney), should either elect to intervene and proceed or elect to decline to proceed within the prescribed time, which has now elapsed. The City Attorney has stated that it’s working group will “not engage in litigation at this time”, but that “we reserve the right to intervene at a later date”. This option to intervene later, even after an initial decision not to intervene and proceed, is permitted under Tenn. Code Ann. §4-18-104(f)(2)(A) and (B).

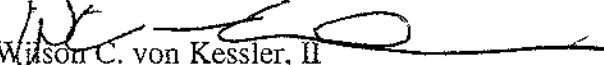
While the City Attorney’s election is accompanied by a request that the Qui Tam Plaintiff refrain from moving forward with litigation for 90 days, the Qui Tam Plaintiff has elected to go forward with service of the complaint and targeted discovery at this time. Under the Tennessee FCA, if the political subdivision elects not to proceed, “the qui tam plaintiff shall have the same right to conduct the action as the attorney general and reporter or prosecuting authority would have had if it had chosen to proceed under subsection (c).” The City Attorney acknowledged, notwithstanding his suggestion of a 90-day delay, that, “If indeed you [counsel for Mr. Lepard] choose to proceed, the City will cooperate by providing you any information requested.”

Under the Tennessee FCA, whatever election is made by the prosecutorial authority, whether to intervene and proceed with the litigation or to decline to proceed, the result is an automatic lifting of the seal. At this time, therefore, the Qui Tam Plaintiff requests that the seal be lifted by an Order. A proposed Order is submitted herewith.

The City of Chattanooga, through its City Attorney, has consented to the entry of the proposed Order.

WHEREFORE, the Qui Tam Plaintiff, Don Lepard, moves the Court for entry of an Order lifting and extinguishing the pre-existing order sealing all filings, and permitting the service forthwith of the defendant with the Complaint, a summons, and any initial discovery the Qui Tam Plaintiff may wish to serve with the Complaint.

Respectfully Submitted by:


Wilson C. von Kessler, II

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wvonkessler@markelmajor.com



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Allen S. C. Willingham

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Atlanta, Georgia 30339

(770) 434-6868 (telephone)

(770) 434-7376 (facsimile)

Attorneys for Qui Tam Plaintiff

CERTIFICATE OF SERVICE


I HEREBY CERTIFY that the foregoing **NOTICE OF CITY OF CHATTANOOGA'S
ELECTION NOT TO PROCEED, NOTICE OF MR. LEAPARDS DESIRE TO PROCEED,
AND MOTION AND BRIEF TO LIFT THE SEAL AND COMMENCE SERVICE**

has been furnished by U.S. Mail and e-mail to:

Albert Partee, Esq.
Office of the Attorney General and Reporter
State of Tennessee
Cordell Hull Building
Ground Floor
425 Fifth Avenue North
Nashville, TN 37243

Wade A. Hinton, City Attorney
City of Chattanooga
City Hall Annex
Second Floor
100 E. 11th Street
Chattanooga, TN 37402

on this 4th day of ~~July~~ Sept, 2014.


Allen S. C. Willingham
Georgia Bar No. 765800
awillingham@taylorenghish.com

Attorney for Plaintiffs

TAYLOR ENGLISH DUMA LLP
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(770) 434-7376 (facsimile)

CIRCUIT COURT OF HAMILTON COUNTY
STATE OF TENNESSEE

THE CITY OF CHATTANOOGA
and *ex rel.* DON LEPARD, Qui Tam
Plaintiff,

Plaintiffs,

Case No.: 14C809

v.
ELECTRIC POWER BOARD OF
CHATTANOOGA,

Defendant.

ORDER GRANTING MOTION TO LIFT THE SEAL AND COMMENCE SERVICE

Whereas, The City of Chattanooga, though its counsel, Mr. Wade Hinton, has advised counsel for Mr. Lepard that the City elects not to intervene (at this time) or proceed with the Qui Tam action; and

Whereas, this election is afforded by Tenn. Code Ann. § 4-18-104(c)(7)(B) which provides as follows: "Within forty-five (45) days after the attorney general and reporter forwards the complaint and written disclosure pursuant to subdivision (c)(7)(A), the prosecuting authority may elect to intervene and proceed with the action in which case the seal shall be lifted and the action would be served by the prosecutorial authority." and

Whereas, alternatively, the prosecuting authority may "notify the court that it declines to proceed with the action, in which case the seal shall be lifted and the qui tam plaintiff shall have the right to conduct the action." Tenn. Code Ann. §4-18-104(c)(7)((D)(ii); and

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JERRY L. HENRY, CLERK
HBN
DC

Whereas, under the law, the City, through its prosecutorial authority (the City Attorney), should either elect to intervene and proceed or elect to decline to proceed within the prescribed time, which has now elapsed. The City Attorney has stated that it's working group will "not engage in litigation at this time", but that "we reserve the right to intervene at a later date". This option to intervene later, even after an initial decision not to intervene and proceed, is permitted under Tenn. Code Ann. §4-18-104(f)(2)(A) and (B); and

Whereas, while the City Attorney's election is accompanied by a request that the Qui Tam Plaintiff refrain from moving forward with litigation for 90 days, the Qui Tam Plaintiff has elected to go forward with service of the complaint and targeted discovery at this time; and

Whereas, under the Tennessee FCA, if the political subdivision elects not to proceed, "the qui tam plaintiff shall have the same right to conduct the action as the attorney general and reporter or prosecuting authority would have had if it had chosen to proceed under subsection (c);" and

Whereas, the City Attorney acknowledged, notwithstanding his suggestion of a 90-day delay, that, "If indeed you [counsel for Mr. Lepard] choose to proceed, the City will cooperate by providing you any information requested;" and

Whereas, the City of Chattanooga, through its City Attorney, Mr. Wade Hinton, has consented to the entry of this Order; and

Whereas, under the Tennessee FCA, whatever election is made by the prosecutorial authority, whether to intervene and proceed with the litigation or to decline to proceed, the result is an automatic lifting of the seal; and at this time, the Qui Tam Plaintiff requests that the seal be lifted and extinguished by an Order.


NOW, THEREFORE, the Qui Tam Plaintiff, Don Lepard's motion for entry of an Order lifting and extinguishing the pre-existing order sealing all filings, and permitting the service forthwith of the defendant with the Complaint, a summons, and initial discovery the Qui Tam Plaintiff may wish to serve with the Complaint, is hereby GRANTED, and said prior order sealing the record shall have no further force or effect.

SO ORDERED, THIS 4th DAY OF September, 2014.

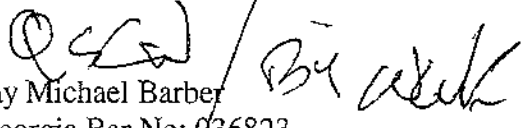


Judge Jeff Hollingsworth, Circuit Court of Hamilton County, State of Tennessee

Submitted by:


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Attorneys for Qui Tam Plaintiff

CERTIFICATE OF SERVICE

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ELECTION NOT TO PROCEED, NOTICE OF MR. LEPARDS DESIRE TO PROCEED,
AND MOTION AND BRIEF TO LIFT THE SEAL AND COMMENCE SERVICE**

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Wade A. Hinton, City Attorney
City of Chattanooga
City Hall Annex
Second Floor
100 E. 11th Street
Chattanooga, TN 37402

on this 4th day of July, 2014.



Allen S. C. Willingham
Georgia Bar No. 765800
awillingham@taylorenghish.com

Attorney for Plaintiffs

TAYLOR ENGLISH DUMA LLP
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