

**COPY**

**IN THE CIRCUIT COURT OF HAMILTON COUNTY, TENNESSEE**

**GLOBAL GREEN LIGHTING, LLCC** )  
 )  
**Plaintiff** )  
 vs. )  
 )  
**ANDREW L. BERKE, HAROLD DEPRIEST** )  
**AND** )  
**ELECTRIC POWER BOARD OF** )  
**CHATTANOOGA** )  
 )  
**Defendants** )

**DOCKET NO.** 17042

**DIVISION**       

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**COMPLAINT**

The Plaintiff, Green Lighting, LLC, hereby files this Complaint, and for its causes of action alleges as follows for its Complaint against Defendants, Andrew L. Berke, Harold Depriest and Electric Power Board of Chattanooga:

**PARTIES**

1. Global Green Lighting, LLC (“GGL”) is a Tennessee Limited Liability Company with its principal place of business in Chattanooga, TN.
2. Andrew L. Berke (“Berke”) is a citizen of the City of Chattanooga, TN.
3. Harold Depriest (“Depriest”) is a citizen of the City of Chattanooga, TN.
4. Electric Power Board of Chattanooga is a municipal entity and subdivision of the City of Chattanooga.

**JURISDICTION AND VENUE**

5. This Court has Subject Matter Jurisdiction pursuant to T.C.A. 29-20-101, et seq.
6. Venue is proper in Chattanooga in that actions of the Defendants, as alleged below, occurred within the Eleventh Judicial District at Chattanooga and Defendants are subject to personal jurisdiction within the Eleventh Judicial District at Chattanooga.

## STATEMENT OF FACTS

7. Plaintiff alleges defendants, with malice and intent, entered into a civil conspiracy to terminate funding for the contract in question, thus breaching the funding section of the contract.
8. Plaintiff further alleges that between 2014 and 2016, defendants, with malice and intent, entered into a civil conspiracy against Plaintiff illegal and without lawful purpose to cause the breach the of the of the original contract, ending with the termination of the contract in March 31, 2016.
9. Plaintiff further alleges the defendants intended to discredit the plaintiff to justify to their actions and decisions to the public while protecting their credibility.
10. In 1971, Mr. DePriest joined the EPB as a junior engineer and was responsible for the changing of the Mercury Vapor (MV) lights to High-Pressure Sodium (HPS) street lights during the 1970's and 1980's.
11. The EPB replaced approximately 4,168 MV street lights and replaced them with 4,168 HPS street lights. In his own words, Mr. DePriest says he is the engineer in charge of the effort.
12. The MV lights taken down never came off its bill to the City of Chattanooga (City), its owner.
13. The new HPS lights went on the bill. An additional 10,604 HPS lights replaced MV lights on the poles, but the lights were misclassified on the bill for more than 20 years. This pattern created additional cash that was used for the Smart Grid fiber optics network.
14. In 1999, the Chattanooga-based EPB initiated the provision of fiber optics services in areas of downtown Chattanooga, TN.
15. In 2002, the chief executive officer of the EPB, its Board president and its outside council devised a long-range business plan that would turn the EPB into a full-service internet provider.
16. In the same year, the group established a legal, but supplemental retirement pension trust fund. Its purpose was to entice senior executives to work as one to develop and implement a new internet business plan.

17. The trust fund, now standing at more than \$21 million in assets, was created to entice senior executives to work as one to development and implement the plan and to establish loyalty to Mr. DePriest.
18. Because it had been voted on and approved by the independent board of directors the documentation was present in the financials but never questioned by the Tennessee Valley Authority auditors, outside auditors and the chief financial officer of the City.
19. The existence of this secretive executive pay system for the EPB was never discovered until the plaintiff forced depositions and discovery in 2015 in an unrelated action.
20. From 2003-2009, the evolution of the EPB's Fiber Optics saw the government-owned utility devise a complex compilation of monies to finance its fiber optics network that included an excess amount of cash, a large bank loan and intra-company transfers from the electric side of its business to the internet side of the utility.
21. Early on, the stated reason for different parts of the compilation of money was to go into the internet business.
22. However, when the actual money was needed to build out the very expensive fiber optics infrastructure needed to carry out the vision of a government owned Metro Net ISP (internet service provider), the reasoning changed to fund a Smart Grid network to better manage the electric power grid system.
23. This made sense because when it came time to claim monies, it was the EPB electric system assets that would be used to collateralized the massive debt required to place a fiber optics line to every power meter to every business and home in a 600-mile square power grid.
24. Ultimately it would be the electric system ratepayers who would be 100% responsible for the repayment of the initial and ongoing bank loans and tax exempt low interest government revenue bond debt.
25. In 2009, after the fiber optic infrastructure for the purpose of managing the electric system was completed, the EPB filed for a change of status with the Tennessee and Georgia secretary of states to become a "public, not-for-profit corporation."
26. The publicly stated reason was to enable the utility to enter franchise agreements with local municipalities.

27. However, the undiscussed reason was because the EPB needed that status to receive \$111 million in federal taxpayer money in a stimulus grant to support build out of the Smart Grid.
28. The desperate status was also needed for the municipally owned utility to cross the state lines to compete with the telecommunications private sector as a full-service internet provider by offering a state-wide franchise agreement something a municipality owned utility in the state of Tennessee could not do.
29. In 2008-2009, plaintiff saw its electronic component business forecast of \$85 million in revenue drop to zero in less than four months during the recession that caused a national economic downturn of 2008-2009.
30. Between February 2009 and January 2011, Mr. Lepard traveled back and forth from Chattanooga to China seeking a new business model to support his suffering company's employees.
31. In that time, he developed an energy-efficient Low Emitting Diode (LED) street light. In 2009, after being rebuffed by the first company he showed the LED light to – the EPB – Mr. Lepard left with a challenge of how to measure energy savings.
32. The challenge was a pivotal moment as Mr. Lepard spent another year developing a wireless lighting control combined with an already established wireless smart grid AMI (Automated Metering Infrastructure) system that could be installed with the light, which would enable the city to deploy a more powerful wattage LED light with higher lumen output, manage the energy savings, report it to the local utility and fight help the city fight crime.
33. The ability to control the lights from a cloud-based AMI (Automatic metering infrastructure) operating system was the first of its kind in the world, enabling the user to control and manage the energy consumption of a very powerful LED street light.
34. Later Mr Lepard would learn that the same AMI could have been deployed into the EPB grid for a fraction of the total cost of an infrastructure that required a fiber optics line ran to every meter owned by the EPB.
35. This is another critical part of the very complicated reasons to get rid of the technology that was already a threat to the EPB's broadband visions.

36. To build out a wireless smart grid electric system infrastructure using the already proven Automatic Metering Infrastructure, similar to what the plaintiff had used in the development of the new wireless lighting controls would have saved the rate payers millions of dollars in secured debt, and tax payers millions of dollars in Federal stimulus grants.
37. It would have also made it difficult for the EPB to get the funding it needed to build and deploy the fiber optic infrastructure it need to compete with the private sector.
38. In 2011, Plaintiff worked with the City of Chattanooga, the Chattanooga Police Department and the EPB to deploy the new higher powered LED lights to deter a crime problem in Coolidge Park in Chattanooga.
39. The first of its kind lighting control system exceeded expectations by helping the Chattanooga police department and paying for itself with energy and maintenance savings from the EPB and won a prestigious Spirit of Innovation award sponsored by the City of Chattanooga and the EPB
40. Plaintiff contends that from the first time an EPB engineer saw the innovative smart metered LED lights that information was reported upward, there is not a question that the EPB executives realized it threatened their business, threatened secret abuse of the billing structure and, ultimately, the discovery of how the initial seed money for the visionary broadband internet service was generated.
41. With malice and intent, the EPB worked against the Plaintiff from even before the time it was awarded an \$18 million contract for the City of Chattanooga street lights and worked publicly to try and stall contract negotiations between the Plaintiff and City from March 29, 2012.
42. EPB further conspired against plaintiff after it won a legal bid to replace the street lights on Nov. 24, 2011, until the final contract was signed in March, 2013.
43. The EPB attempted to negate the contract from being put in force by challenging plaintiff's stated capabilities, the integrity of the product, the accuracy of the meter installed in the plaintiff's lights and the plaintiff's financial stability to deploy a city-wide network.
44. EPB intentionally overcharged its owner and largest customer, the City of Chattanooga, provided false documents and facts to the City, and threatened Plaintiff who first took the accurate and true information to the EPB's chief executive officer Mr. DePriest on Sept. 17, 2013.

45. The facts can lead only to the conclusion that Mr. DePriest and his top executives provided libelous claims against Mr. Lepard. In three separate meetings in late 2013, the Plaintiff sought help from Mr DePriest, Mr. Wade and Mr. Eaves to create a winning proposition for the EPB, the City and the plaintiff.
46. In the third meeting in November 2013, the EPB chief operating officer Mr. Wade admits the EPB's guilt on the overcharges, says they may go back as much as 20 years and refuses to assist plaintiff's owner in offsetting non-budgeted charges added to the ROI by the City based on known inaccurate information provided by the EPB. On recorded version of the conversation, he tells Lepard, ***"I would go to jail if I did that. If the City auditor wants to come to EPB and audit our books and determine there was an overcharge, we will pay it. But you do not want to send the City auditor in EPB because if you did that then TVA would send in their auditors and this would take a long time to sort out."*** The energy overcharges averaged approximately 25%, of the 68% energy savings generated by the street lights with a wireless Automatic Metering Infrastructure.
47. From April 2013 through December 2016, the EPB, with malice and intent, aligned with Mr. Berke to work against the Plaintiff by supplying false and misleading information regarding the reliability and performance of the Plaintiff's new LED lights with the wireless lighting controls.
48. In May 2014, based on information proven to be inaccurate from the EPB, the remaining \$12 million in the contract was defunded by Mr. Berke.
49. Based on the good faith of the City in 2012, plaintiff had already incurred \$5 million to move a factory from china to Chattanooga, reopened a once closed factory, purchased materials and hired a 60-man workforce.
50. The Plaintiff was desperately in need of the remaining \$12 funding that would have finish the first of its kind smart street light deployment. The completion of the lighting project would have meant the rest of the world would have seen the first successful city wide deployment of what has already grown to be a \$19.4 billion industry, and GGL has lost much of the initial opportunity to participate because of the antics of the EPB and the City of Chattanooga.
51. Plaintiff's principal owner filed a Qui Tam lawsuit against the EPB, on behalf of the City and its taxpayers, on July 3, 2014. What followed was 27 months of litigation eventually dismissed by the court of appeals on October 21, 2016.

52. The issue of whether the EPB overcharged the City for more than 20 years was never litigated. Only the status as the EPB as an entity was litigated, and the court ruled the City of Chattanooga and the EPB are one and a city cannot sue itself.
53. In January 2015, the EPB ceased accepting measured energy data from the plaintiff, increased its costs to the City by an estimated \$100,000 for 2015-16 and provided information to the City for another fraudulent report on the Plaintiff.
54. On Oct. 19, 2015, in a 210-word memo that contained four specific lies about Plaintiff, Mr. Berke's chief of staff Stacy Richardson attempts to dissuade a City Council member from holding a hearing on issues relating to Plaintiff. In doing so, she says the City has a "new solution" for the street lights.
55. On March 31, 2016, the City terminates the plaintiff's contract paving the way for a new bid. The bid was let in April 2016; Plaintiff's principal owner bid the lights under the name of a new and completely separate company, Smart City Management, LLC.
56. On March 2, 2016, city attorney Wade Hinton ordered yet another hit report on plaintiff's owner based on inaccurate information from the EPB.
57. Bid is let in April 2016, opened in June 2016 and awarded to bidder behind Plaintiff owner's new company after Mr. Berke deputy chief operating officer David Carmony operating under the instructions of the City Attorney Mr. Wade Hinton, orders City engineers not to do business with Smart City Management because it was actually the Global Green Lighting company
58. In 1999, the EPB entered the new world of telecommunications and begins to assemble a staff and technical components to develop a fiber-optics-based network, providing high-speed data, local business telephone and other telecommunications services. In 2000, EPB Telecom is launched, providing the area with affordable, reliable telecommunications service for local area businesses. It is important to understand the buildup to the internet business because it clearly demonstrates the influence that the EPB possessed, influence critical to understanding the ability to conspire and destroy the plaintiff.
59. At the core of this idea was Mr. Harold DePriest, a 27-year EPB veteran at the time and Chattanooga, TN., Mayor Jon Kinsey, the city's first businessman mayor who was appointed to the EPB Board by Mr. Berke in 2015, discussed how to use the new technology of fiber optics to serve business customers in downtown Chattanooga. At that point in time, the EPB had some underground fiber optics infrastructure. In 2001, Mr. DePriest visited new Mayor and now Sen. Robert P. Corker and "gifted" the fiber optics infrastructure to the City. Sen. Corker took office in April 2001.

60. Mayor Corker's team assembled subject-matter experts from the public and private sectors to discuss what to do with the EPB's "gift." Into 2002, Mayor Corker announced the formation of Metro Net, a city-owned enterprise that would develop the infrastructure further in the downtown area.
61. On June 6, 2002, the EPB sponsored a public meeting on MetroNet as a "step toward implementation of Mayor Corker's digital vision. BellSouth was present to object since the company could already see what was coming, a super utility with a full-service internet component subsidized by electric ratepayers, most of whom are also City of Chattanooga taxpayers.
62. The idea, way ahead of its time, was that the fiber optics infrastructure could lead to the ability to sell high speed broadband internet service to local businesses. Two administrators of MetroNet later, Mayor Corker decided he had other priorities to address and he then "returned the gift" to Mr. DePriest.
63. At a July 15, 2002, meeting, all of those involved rallied to the idea of the EPB getting into the internet business. The list of local organizations and individuals who pledged to support the start-up expenses was a list of those Sen. Corker could reach out and easily solicit for support.
64. The next day, the City Council approved the proposal to let EPB develop the fiber optics high speed internet. Council did so without giving the opposition the opportunity to speak. On July 17, the leaders of the City were abuzz about MetroNet and its possibilities to a fiber optic network to Chattanooga.
65. There was no mention of using the fiber optics for managing the EPB's power grid system. A few years later, the entire story of why the fiber optics was being built was to support the Smart Grid. There was also no mention of how the fiber optics would be financed. It was, simply put, a total deception of the community by a few people.
66. The vision of Mr. DePriest, Mr. Rick Hitchcock, Mr. Ferguson and Mr. Kinsey was to turn the EPB into an internet service provided would become reality. There was no external threat except relatively weak opposition from the private sector. In the same timeframe, Mr. Hitchcock created the supplemental "Post-Retirement Health and Benefits Plan." The plan was legal, but essentially hidden from public knowledge until this day.
67. The supplemental retirement and pension plan trust when created was cleverly placed in the already established "Post Retirement and Health and Welfare Benefit Plan.



68. The City established MetroNet Corporation on Sept. 9, 2002. By 2003, it was dissolved. On Nov. 19, 2003, the City Council give the approval for the EPB to transfer \$2,789,554 in an “intra-governmental transfer” from the power side of the business to the internet side. It was the first of several pots of money that the EPB would use to develop the internet business. At the time, MetroNet had no assets or revenue. It was rarely discussed when it was taking electric system ratepayers money, including hidden overcharges to the City, and using it to develop the internet business to compete with the private sector. In 2007, the EPB would be warned that a new Tennessee law made this illegal, but litigation went nowhere. As previously stated above, the need for the money was for the internet business, and then as needed, the need was for funds for the Smart Grid to support the power system.

69. As the charts below illustrate, there are nine other current members of the EPB executive team who will begin receiving generous sums of cash when each reaches the age of 62.

70. **Top Ten Executive Salaries Paid between 2010 and 2014.**

	Kathy Burns	Steve Clark	David Wade	Diana Bullock	Greg Eaves	Katie Espeseth	Jim Ingraham	Danna Bailey	David Johnson	Harold DePriest
2010	130,517	145,576	171,263	133,658	171,491	115,271	131,807	123,734	129,996	194,272
2011	141,832	151,255	177,941	138,879	178,190	130,164	136,965	128,562	135,073	198,158
2012	148,928	158,829	186,846	145,829	187,096	136,677	143,811	134,989	141,835	206,086
2013	168,875	180,107	204,318	165,360	204,318	155,002	163,072	153,085	160,846	212,264
2014	175,635	187,304	212,493	171,974	212,493	161,200	169,603	159,203	167,274	218,629

71.

**Short-Term Performance Compensation Received (As Percent of Salary)**

	Kathy Burns	Steve Clark	David Wade	Diana Bullock	Greg Eaves	Katie Espeseth	Jim Ingraham	Danna Bailey	David Johnson	Harold DePriest
2010	30%	30%	30%	30%	30%	30%	30%	30%	30%	30%
2011	30%	30%	30%	30%	30%	25%	30%	30%	30%	30%
2012	30%	30%	30%	25%	30%	30%	30%	25%	30%	30%
2013	10%	10%	15%	10%	15%	10%	10%	10%	10%	30%
2014	10%	10%	15%	10%	15%	10%	10%	10%	10%	30%

<b>EPB's Top Ten Executives Supplemental Retirement Benefit pay out upon eligibility after 10 years vested and the age of 62</b>	<b>2013/14</b>
Harold DePreist (CEO/President)	333,554
David Wade (Officer)	302,207
Greg Eaves (Officer)	318,281
Steve Clark (officer)	260,239
Kathy Burns	338,509
Diana Bullock (Officer)	247,765
James Ingraham (Officer)	231,595
David Johnson (Officer)	223,898
Katie Espeseth (Officer)	220,821
Diana Bailey (Officer)	225,537

72. The unmistakable aura of invincibility that surrounds the EPB in 2016 has its first, deep roots in 2002 when a handful of people -- Mr. Ferguson, Mr. DePriest, Mr. Wade and Mr. Hitchcock – initiated a vision that one day that an even more powerful EPB would do things never done before, such as develop the “world’s fastest residential Fiber Optics broadband internet.”
73. A landmark EPB office building would start in 2003 and, thanks to TVA, electric rates would remain reasonable compared to other places in the country. The EPB would reap more than \$350 million in taxpayer and ratepayer secured money between 2003-09 when most of the country was sliding toward a depression.
74. EPB Fiber Optics would become successful and its never-disclosed advertising and sponsorship program would become a very visible, yet unspoken, hammer with all not-for-profits and media outlets in the Chattanooga SMA.
75. On Oct. 28, 2009, the EPB registered as public, not-for-profit corporation with the Tennessee Secretary of State. It did the same thing in Georgia on March 2, 2010.
76. As a full-fledged and full-service internet services provider, doing this made perfect sense considering the need for franchise agreements with municipalities in the service area.
77. However, the need for altering its status for franchise agreements also shaded another significant reason for the filings by the elite at EPB and its attorney. To receive the aforementioned \$111 million stimulus grant, the EPB needed a document that bore the name, “EPB of Chattanooga, Inc.”
78. The filings, drafted by the EPB’s outside attorney of choice Mr. Hitchcock, accomplished this objective These two filings in Tennessee and Georgia would

become a centerpiece for a 27-month legal battle between the EPB and Lepard from 2014-2016, a period of time when additional evidence of the conspiracy emerged.

79. Mr. Lepard was told that the EPB in March, 2009 EPB had no interest in cutting its energy sales by 50 percent and reducing the maintenance cost by 70 percent. He was told that the City and other customers are required to pay the EPB-established prices, so why change.
80. The price that the EPB could charge for the street lights is determined through a formula developed by TVA. As noted above, TVA had updated its structure for billing street lights in December 2007.
81. The new structure would have yielded more revenue for the EPB, but the leadership chose to ignore it because of the threat it made to the knowledge of overcharges to the City.
82. However, Mr. Lepard was challenged by the EPB staff on how he would measure energy savings with his lights. Mr. Lepard realized an opportunity and immediately set about to put a certified meter in each street light.
83. He found a smart grid technology partner and got the job done over a period of 18 months. When it was done, the world had its first street light with a residential grade meter inside to measure energy as part of a total energy management program.
84. It would be the plaintiff's built-in energy metering, sparked by a comment from the EPB, which would be the ultimate thorn in the flesh for the EPB over the next six years. The meters forced the EPB to destroy the plaintiff because the EPB elite knew the meters would lead to the discovery of overcharges and questionable use of the confiscated revenue generated dating back to the late 1980's.
85. With the meter to measure energy as well as expose the existence of the overcharges of the EPB to the City in place, Plaintiff took Mr. DePriest's advice from March 2009 and took the light to the City of Chattanooga, where \$1.5 million in stimulus money intended for the sewer plant resided that could pay for new lights. After six months of deployment and testing. Mr. Lepard's vision was again confirmed with the project's success, done in conjunction with City Engineer Rick Davis. Mr. Davis believed in the product, its value and never abandoned Lepard during his painful walk over the next five years.
86. The Plaintiff looked for the next step to advance the new technology after the success at the sewer treatment plant, and in 2011, he read about the crime problem in a popular place called Coolidge Park in downtown Chattanooga. On March 22, 2011, the *Times Free Press* reported that the City had determined that minors will no longer

be allowed in Coolidge Park unless they are accompanied by an adult. The new rule was in response to an incident when shots rang out in a crowd of 300 young people. In March 2010, three adults and two juveniles were hit.

87. In the park, the plaintiff's principal owner worked with existing Mayor Ron Littlefield, the Chattanooga Police Department, City engineers and the EPB, the plaintiff deployed the revolutionary technology between April – June 2011 in a beloved park now ridden with crime.
88. Almost immediately after deployment, issues with crime began to drop. Police officers, trained by the plaintiff, manipulated lights from their patrol car and can literally walk a group destined for trouble across a pedestrian bridge and out of the park. The managed energy savings from the first-of-its-kind metered smart light justified pouring more powerful LED light on potential crime suspects.
89. The next step for the plaintiff was the successful bid and approval from the City of Chattanooga to replace all 26,500 street lights with the new technology. It would be the ultimate, city-wide beta test for the new product and on its success rested the entire financial future of GGL, Lepard, his investors, creditors, and employees.
90. The first time an EPB engineer got a look at the plaintiff's smart light in 2011, the elite at the EPB knew this technology represented a legitimate threat to the small, but consistent revenue stream the EPB enjoyed with the City. What the engineer did not know, but what Mr. DePriest, Mr. Hitchcock, Mr. Eaves and Mr. Wade did know, was that any success of the light would expose secrets that had been hidden for more than 30 years and that the Plaintiff, the light with the meter, Mr. Lepard and the wireless AMI technology could not be allowed to succeed.
91. Simply stated, having actual measured energy usage from the plaintiff's smart lights meant comparisons to usage of the antiquated EPB lights. When that data was combined with billings records and the actual physical lighting inventory being replaced by the plaintiff's smart lights, the secrets of EPB would begin to unravel.
92. On March 12, 2012, Mr. Lepard and Mayor Ron Littlefield signed the negotiated contract done since the plaintiff won the bid. Mr. Lepard is in contact with the City regarding equipment lists needed for the project. On March 13, 2012 the City Council

deferred a vote to the \$6 million for Phase 1 for a week because one council member was absent.

93. On March 18, Mr. Lepard is in contact with the City still negotiating parts of the contract before presenting for final approval and he notes that Mr. DePriest is going to address the Council the next night. **“I trust that someone at the City will have discussed the installation and "stranded asset" costs with Harold before tomorrow.” Here is affirmation that despite whatever agreement Mr. Lepard, Mr. Johnson, Ms. Madison, the City chief operating officer and City attorney had negotiated over how to handle the stranded asset fees and installation costs, the EPB now wanted something different.**
  
94. EPB wanted something different because the executives there knew that attacking the return on investment agreement that Mr. Johnson and Ms. Madison negotiated would be a strong argument to sidetrack the contract from going into force, a direct to the eventual breaching of the contract. Mr. Lepard goes on to explain what has been agreed to with the City regarding these two issues as the contract was being negotiated.
  
95. On March 19, 2012, Mr. Lepard writes to members of the Council to discuss the contract before it comes up for approval on March 20, 2012. Mr. Lepard addresses all issues raised by Mayor Littlefield and his staff over the past week.
  
96. Mr. Lepard talks of going over the contract “line by line” and says, that, “we made many good compromises, and came up with a win, win contract for the city of Chattanooga and for GGL.”
  
97. On that same day, Mr. Lepard, Mr. Johnson and Ms. Madison agree on the final ROI formula for the lighting project. It would be this ROI that Mr. Berke would target immediately in May 2013 with inaccurate information provided by the EPB in order to discredit it and, thus, stopped funding for the \$6 million for Phase II.
  
98. Also on this pivotal day, Mr. Lepard and the City agree to what amounts to a 15% discount for the first \$6 million. In an inaccurate report developed by Mr. Berke as the excuse for breaching the plaintiff’s contract in May 2014, one of the reasons cited by Mr. Berke’s chief of staff said that “something funny” was done regarding the discounts in the contract. Once again, Mr. Berke and the EPB had lied to justify breaching the contract.
  
99. On March 20, the Council voted 6-2 to move forward with the contract at a value of \$6 million. The report on the meeting from the paper of record said,

*“The City Council voted 6-2 Tuesday night on a \$6 million contract for "green" light-emitting diode lighting to be installed throughout Chattanooga "You should see the first ones four to six months after the contract is signed," said Don Lepard, president of Global Green Lighting, LLC. The council has debated for a month about the street lighting. Some council members said they wanted more lighting, and some said they wanted less. The council voted on a compromise -- \$6 million of lights will be installed during a first phase. Additional phases will be added as money is available. Ultimately, about 27,000 lights will be installed. Daisy Madison, the city's chief financial officer, said Tuesday night that the city could use bonds to pay for the lights, but there also could be alternative financing.”*

100. Moving forward, Mr. Lepard sent Mr. Johnson and Ms. Madison a communication on March 25, 2012, outlining the payment schedule for the project. In this routine conversation, Mr. Lepard points out that 85% of the equipment needed to build the Phase 1 lights have been identified with Mr. Davis, city traffic engineer, based on information given to them by the EPB.
101. Mr. Davis established a simple rule of Thumb for determining what lights needed to be built. If the light map indicated the light to be 200 watts or less, a 140-watt LED would replace it; if the light on the mapping was 200 watts or more, the 252-watt LED would be used to replace it.
102. As Mr. Lepard and Mr. Davis would learn in the last six months of 2013, the mapping connected to the billing system for the street lights provided by the EPB was very wrong and the City's new LED street light inventory consisted of 2,200 larger and more expensive LED lights than needed. For example, Light #1 is on the EPB mapping as being a 400-watt MV light, and Mr. Lepard built a 250-watt LED street light to replace it.
103. However, once the plaintiff's employees arrived at the stated location of Light #1 with and the EPB in tow, they discover that there is not a 400-watt MV light, but a 200-watt HPS light.
104. Wrong light on the EPB mapping means that the plaintiff built a more expensive wrong wattage LED light for that location. This would be duplicated 2,200 times during the deployment of Phase I, which began in May 2013.
105. All of this wrong information would lead to the discovery of the reality that the EPB had been overcharging the City for street lights since 1981.

106. In April 2012, the EPB refused to accept the power meter Lepard had used in the lights, saying it was not residential grade.
107. Mr. Lepard had a choice: Either improve the meter or abandon the project. He accepted the challenge and pressed forward. Eight months and more than \$1 million later, Mr. Lepard returned with a new and improved meter and submitted it to the test lab at the EPB without the knowledge of DePriest.
108. The meter surpassed all expectation and passed with a higher performance grade than the certified meter EPB was using on homes throughout its market. With approval of the meters in November 2013, the lights would be deployed and the fallout from that would expose a wave of financial impropriety by the EPB, and the elite executives knew it.
109. And to make matters worse, the performance of the lights in Coolidge Park earned the plaintiff and Mr. Lepard the 2011 Spirit of Innovation Award, a prestigious award given by the City of Chattanooga's Chamber of Commerce and, ironically, sponsored by the EPB.
110. The timeline of the acceptance of the terms and conditions for the metering will show that the metering offered in Coolidge Park and for the city-wide deployment were changed several times before the first of the plaintiff's lights were deployed.
111. During that time, EPB did everything they could to not accept the metering of the street lights. The agreement with the plaintiff in the original contract was signed on March 29, 2012. It clearly stated the plaintiff would provide a monthly summary report of the total kilowatt per hour report by product type and total consumption.
112. In April 2012, after the contract was signed, the EPB told the City that the metering was not acceptable. Mr. Johnson gave the plaintiff two options: 1) walk away from the contract, or 2) adjust the software hardware and software to meet EPB specifications.
113. The plaintiff worked with Sensus and agreed to make the changes over a six-month period and a \$1 million additional cost. In October 2012, the new metering system was presented and approved by EPB.
114. In November 2012, the EPB presented to Mr. Johnson a draft of a metering contract between the City of Chattanooga and EPB. The plaintiff reviewed the draft and made several recommendations for changes, which were incorporated into the draft and submitted to the EPB in November 2012.

115. On April 4, 2013, Mr. Johnson signed the metering. EPB signed the metering agreement on April 12, 2013, one day before Mr. Berke officially assumed the position of mayor. In the final agreement were two additions not shown to the plaintiff. The two inserted terms were, *“The data provided will include a unique identifier for each metering device, global positioning system, (GPS) location, a time interval stamp, with the corresponding kilowatt hour usage with a minimum interval of one hour, a total kilowatt hour usage.”* Secondly, *“The city will provide EPB access to the metering data as close to the real time as practicable and all the previous months metering data will be available to the EPB by the first day of the following month.”*
116. In May of 2013, after the deployment had been started, a conference call between Mr. Leopard, Mr. Davis, Berke senior staff member Jeff Cannon, Mr. Wade and Mr. Eaves occurred.
117. On that call, the EPB agreed to accept a five-business day schedule of providing the data, rather than the one day turn around specified in the contract. but this was not changed in the contract.
118. The EPB would later use these two inserted terms to justify their decision to terminate the metering in January 2015.
119. At that time, after the disclosure of what the plaintiff’s accurate information could mean, getting rid of the data was a necessary step for those involved in the conspiracy against the plaintiff. It should also be noted that EPB engineers were involved in the Coolidge Park project and thus knew what the specifications of the metering the first time they saw it at Coolidge Park in 2011.
120. Although known to the EPB at that time, the issue of the metering specifications was NOT raised as an issue until a month after the contract was awarded.
121. The process for measuring performance for anything, including street light energy, requires a benchmark. In the case of the plaintiff, establishing the benchmark was the most critical success factor for measuring the performance of the new technology.
122. To get the baseline, every light had to be taken down, inventoried and placed into the profile of the new replacement light. The inventory



consists of the light type, wattage and the flat-rate kilowatt usage the City was being charged.

123. Without the metering, there is no need to inventory what light type came down. All three components of the inventory are important to understand the peril the EPB faced.
124. First, the plaintiff would learn that the light the EPB said was on a given pole, was not on that given pole.
125. Secondly, the power of the light – the wattage – was often not what was provided by the EPB. Third, and most importantly, knowing what the EPB charged the City for each light on its bills would allow the plaintiff to compare what his energy charges were against what the EPP lights had been.
126. As the evidence shows, the EPB had: (i) No accurate idea what types of lights were on the poles, (ii) No accurate idea what the light count was, (iii) No accurate idea what the wattage was on most of the lights, (iv) Clear knowledge that it was overcharging the City
127. To date, even after multiple promises by Mr. DePriest ,no accurate inventory of the street lights exists for the City of Chattanooga.
128. As previously stated, the efforts by the EPB to stop the plaintiff's contract from going into force ended on the last day before Mr. Berke took office in 2013. By this time in April 2013, the plaintiff had already built and delivered most of the lights for the first phase of the project at a new factory that Lepard had moved from China to Chattanooga to create American jobs.
129. Mr. Lepard did this even though he was not required to do so to collect the \$18.2 million in new revenue. As the process moved through the City Council, questions raised based on the deceit of Mr. DePriest created a compromise where the City would break down the light deployment into three, \$6 million phases.
130. Mr. Lepard worked in good faith through the whole process because he had no reason to doubt the word of the City based on the dealings at the sewer plant and Coolidge Park. But he would be wrong. Defeated at every turn so far to stop the deployment of the lights that it new was trouble, the Super Utility moved to the next phase of the conspiracy, the mayoral term of Mr. Andy Berke.

131. The witch hunt of Mr. Berke and the EPB that masqueraded as a “review” is a defining moment in the deliberate breach of the plaintiff’s contract.
132. There is only one way to really know the whole truth, something the EPB promised to do several times but never did. Until each light is inspected, the billing will continue to be wrong.
133. The City straddles the line of legality by charging the City for depreciation on lights that had long ago been fully depreciated.
134. The “facilities clause” is an “unmonitored” charge to the City by the EPB that few understand. It is a 12.3% monthly charge against the assets of the facility. Four percent of the 12.3% is applied to depreciation and the remaining 8.3% is applied towards operation and maintenance. There is no detail with the bill for the facilities charge, just a total amount added to the bill’s bottom line.
135. An average of monthly bills since July of 1998 shows an average \$84,000 monthly charged by the ratepayers of the EPB to the taxpayers of the City. In addition, the EPB has charged the City for years for a total amount of lights that is inflated by more than 4,168 lights.
136. The value of those lights goes into the total asset pool, which increases the monthly charge to the City. Without proper documentation of the asset inventory, the city CFO has no way to determine what are the basis of the facility charges. The inaccurate inventory, and the lack of control is the basis for the EPB to randomly charge the city whatever it felt was necessary.
137. With the smart lights, having been built and placed in a warehouse for three months, the plaintiff began deploying the smart lights on May 5, 2013.
138. The City decided where the lights, either decorative lights for downtown or different watt lights for the main streets, would be placed.
139. The bulk of the 6,100 lights deployed between May 2013 and July 2013 came to a total of 4,600. The rest of the inventory was placed in the city warehouse and was to be used for replacement of EPB lights as they came to end of life.
140. Understanding the process of the deployment and the EPB’s role in it proves that the targeting of the plaintiff and breach his contract had not ended. As previously mentioned, the deployment of the new smart lights meant that the energy savings would be measured against the performance of the older, EPB-managed street lights.

It also meant that lights not chosen to be replaced by the EPB for the first time in decades would now be brought to the ground.

141. On each light deployed, a plaintiff's employee was present to take the plaintiff's smart light and give it to the EPB contractor who physically taking down and replacing the EPB light.
142. It would later be shown that the mishandling of the lights by the EPB contractors despite being warned caused potentially caused much of maintenance issues with the light. Plaintiff's representative was present.
143. Once the light was deployed, the plaintiff's operator would register the EPB light with the smart light management system. The registration included all details of the EPB light – type, wattage, location, pole number, GGL Flexnet ID number.
144. The light would then be operational and monitored 24 hours a day with the ability to manipulate the safety features of the light from any authorized computer.
145. The contract between the City and GGL required GGL to take the replaced EPB lights and properly dispose of them. In light of the EPB replaced inventory containing mostly mercury vapor lights, special disposal arrangements had to be arranged.
146. However, after discovering the discrepancies between the mapping and the actual light on the poles, Lepard loaded the lights and stored them in his factory in a suburb of Chattanooga. As lights were returned, staff members serialized each light in order to be able to identify from where it came.
147. The Plaintiff maintains control of those lights today. That inventory is the physical evidence to all the claims Mr Lepard has made to the City, yet no one from the City except Rick Davis the city lighting engineer, has ever visited the inventory.
148. At the same time as the deployment, chief of staff Cannon was now seriously questioning the ROI on investment of the lighting program. Using the already adjusted EPB billing records Jeff Cannon was making adjustment entries to the negotiated and fixed base line measurement that had been approved by the city council prior to voting on the contract and its funding.
149. The very document that was supposed to be used to measure GGL's ROI performance was being intentional changed in order to seriously affect the ROI of 8 years. The documentation of the exchanges between the City and the plaintiff clearly

show and a city unwilling to do business with the plaintiff, even though it had a legal contract and the good faith pledge of City to \$12 million to finish Phases II and III.

150. Each time the City would bring new questions about any issue relating to the smart lights, the plaintiff would respond and debunk the numbers, all of which were supplied by the EPB.
151. The pattern of slinging false allegations against the plaintiff backed by EPB data started in 2013 and continued through the summer of 2016.
152. The plaintiff, who as described above, had begun planning and spending for Phase II to ensure a continuous rollout, needed the administration the release the Phase II funding, \$6 million, as outlined in the contract. But that was not to be as the Berkeley administration continued is questioning of the performance of the lights almost weekly in the final four months of 2013.
  153. The debate over the ROI on the lighting program was the primary driver that Mr. Berke believed would justify terminating the contract.
154. The debate over ROI came down to two issues, both of which came from the EPB. The first issue was the deployment cost.
155. Under the negotiated terms of the contract, the costs for deploying the lights were to be borne by the EPB, which it would bill to the City in its “facility charge.”
156. Suddenly that was not the case. Mr. Berke wanted the deployment costs added into the ROI formula used to evaluate the plaintiff’s performance. This, of course, appeared to dramatically change the ROI approved by the Council in 2012.
157. As described above, the second issue was even a more blatant play by the EPB to damage the plaintiff. Without warning and without notification, the Jeff Cannon suddenly wanted to add a “stranded asset charge” for each light taken down during the deployment.
158. In other words, if the light taken down still had seven years of useful life remaining, then the EPB said the ROI needed to contain the stranded asset charges supposedly for those seven years. This total would run into the millions of dollars and impact the ROI of the lighting project. The same would apply to the higher installation costs.

159. While the months of January 2014 – May 2014 are perhaps the most media intense part of the EPB conspiracy against the plaintiff, the path to those months was set from April 2013 through the end of 2013. It was during these months that the secret the EPB elite had feared began to emerge and be documented.
160. On May 20, 2013, Mr. Lepard writes Mr. Cannon and points out the emerging issues with billing when using the EPB's information. The e-mail address that the senior member of the Berke staff was his campaign e-mail address, [Jeff@andyberke.com](mailto:Jeff@andyberke.com). Mr. Cannon requests all e-mails to him be sent to this address.
161. Mr. DePriest is names Chattanooga Area Manager of the Year on June 3, 2013, complete with a video production to highlight Mr. DePriest's achievements at the EPB.
162. In an e-mail from Ms. Madison to Mr. Davis on July 11, 2013, Ms. Madison confirms a central point to Mr. Berke's plan to make the ROI unacceptable to the City Council. When the original ROI was approved in 2012, the cost for the labor to deploy the new lights was not included in the ROI.
163. Ms. Madison confirms that these costs were not supposed to be charged against the plaintiff's contract. Since Mr. Berke and Mr. Cannon were now taking the position that these costs should be included in the ROI, Ms. Madison works with Mr. Davis to try and find another way not to charge the money against the plaintiff. It is clear from her last statement that Ms Madison wanted to do the right thing by the plaintiff, but she was powerless to do in the end.
164. The discovery of the missing mercury vapor lights did not take place when GGL started to deploy its new LED lights. It was discovered when GGL started to track the actual inventory records for the past 20 years, placing them into a data base and seeing the trend of the light removals versus the misclassifications.
165. The results of countless hours of researching the public records were that the EPB had been secretly overcharging the City for kWh by way of misclassification. The research shows that the EPB only started to discreetly take the overcharges off of the City's billing after it was determined the new lighting system would move forward.
166. Rick Davis (City's Lighting Manager) has said that he is convinced that no mercury vapor lights, or very few, existed in the Chattanooga system for more than 20 years, yet bills have been submitted for thousands of mercury vapor lights resulting in a substantial overcharge.
167. Mr. Davis also states that the false billing through misclassification was cleverly hidden in the confusing billing format from the EPB, which made it impossible for

him and the City's accounting department staff to reconcile the accuracy of the charges.

168. Regarding energy overcharges, the net conclusion of the OIA July 21, 2014 audit was that the EPB overcharged the City of Chattanooga for energy charges of \$619,600 for a three-year period (2010-2012), or an annual average of \$206,533 (\$4,130,660 over the previous 20 years). Lepard's calculation of the average overbilling is \$300,000 per year, or \$6,000,000 over the previous 20 years. The variances between the estimated overcharges are based on the date range of the test samples.
169. If the EPB would produce the replacement work orders for the mercury vapor lights and the high pressure sodium lights, the actual overcharges could be much more easily and accurately calculated.
170. No documented evidence has been produced that indicates the EPB's recent mass reclassification involved physically replacing a mercury vapor light on the pole with a high-pressure sodium light. The only change is on the billing.
171. The 2,988 cobra type lights owned by the EPB and replaced with LED smart lights by GGL are preserved in a secured warehouse. This is the largest and best sampling of the Chattanooga system available. Although the EPB has indicated there was approximately 1,400 mercury vapor lights replaced by the GGL LED lights, there is not a single mercury vapor light in this entire collection.
172. DThese retained lights are available for inspection by anyone who wishes to examine them. The EPB, on the other hand, has not identified the locations of any of the mercury vapor lights it contends are still in operation in Chattanooga.
173. A 2014 audit by Lepard and his GGL staff using the City's MIS mapping system to pinpoint the location of the 175-watt mercury vapor lights did not find one mercury vapor light that the MIS mapping indicated were on the EPB poles. The audit sample was simple and involved two steps. The first step was taken before dusk when Lepard and his GGL staff drove around the City and looked at the actual street lights on the pole. When the findings were compared to the EPB mapping, it was determined that not one mercury vapor light out of hundreds shown on the mapping existed on an EPB pole. After dark, the same routes were taken again and a visual check of every light for the distinctive glow produced by mercury vapor confirmed that not one out of the hundreds shown on the mapping existed on an EPB pole.
174. The Mauldin and Jenkins report indicated it "observed" the EPB auditing the mercury vapor light inventory and found a high percentage of mercury vapor lights to exist but did not give any data to support its "observations."

175. In the May 5, 2014 Mauldin & Jenkins report, the EPB management, unable to deny that overcharges occurred, asserted that alleged underbillings of facility charges could be retroactively corrected and could allegedly offset the energy charge overcharges.

176. The report indicated that the EPB did not know it had replaced the mercury vapor lights and, therefore, it did not adjust the asset schedule to reflect the more expensive high pressure sodium lights.

177. Since the facility cost is a factored amount of 12.3% of the asset basis, the EPB claimed it had unknowingly underbilled the City for the facility charges on the new lights and now wanted to apply the mistake to the billing records as an offsetting charge to the billing overcharges. This claim was false.

**COUNT I.**  
**CIVIL CONSPIRACY**

178. Plaintiff re-alleges Paragraphs 1 thru 177 of its Complaint herein as if specifically restated verbatim.

179. Defendants did knowingly and with malice and intent took such actions to conspire and knowingly deprive Plaintiff of such opportunity and investment in lighting systems for the City of Chattanooga causing such damage to Plaintiff and loss of business profit and opportunity.

**COUNT II.**  
**LIBEL**

180. Plaintiff re-alleges Paragraphs 1 thru 177 of its Complaint herein as if specifically restated verbatim.

181. Defendants did knowingly and with malice and intent took such actions to provide untrue and libelous information against Plaintiff in an attempt to conspire and knowingly deprive

Plaintiff of such opportunity and investment in lighting systems for the City of Chattanooga causing such damage to Plaintiff and loss of business profit and opportunity.

**RELIEF REQUESTED**

**WHEREFORE**, premises considered, Plaintiff respectfully prays the following relief from this Honorable Court:

1. That Plaintiff be awarded a judgment against Defendants for all damages suffered by the Plaintiff as a result of the Defendants' civil conspiracy and libelous acts; and
2. That Plaintiff receives such other and further general and equitable relief as may be just and proper.

Respectfully submitted this 31<sup>st</sup> day of March, 2017.

**PRESLEY LAW FIRM**

By: 

**Buddy B. Presley, Jr.**

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