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Attorneys for Defendant  
LEGISLATIVE AFFAIRS AGENCY

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA BUILDING, INC., an Alaskan  
corporation,

Plaintiff,

v.

716 WEST FOURTH AVENUE, LLC, and  
LEGISLATIVE AFFAIRS AGENCY,

Defendants.

Case No.: 3AN-15-05969CI

**LEGISLATIVE AFFAIRS AGENCY'S NON-OPPOSITION TO 716'S MOTION  
FOR RULING OF LAW PRECLUDING ABI'S CLAIMS FOR QUI TAM  
DAMAGES**

**I. INTRODUCTION**

Defendant Legislative Affairs Agency ("LAA") agrees that this Court should preclude Plaintiff from pursuing its claim for *qui tam* damages because Plaintiff's claim, as Plaintiff's president admitted under oath, has no legal support. Plaintiff's requested *qui tam* damages could potentially deprive LAA and taxpayers of millions of dollars if Plaintiff is successful in voiding the lease for the Legislative Information Office building.

Accordingly, LAA does not oppose 716 West Fourth Avenue LLC's Motion for Ruling of Law Precluding ABI's Claim for *Qui Tam* Damages.<sup>1</sup>

## II. STATEMENT OF UNDISPUTED FACTS

On October 16, 2015, defendants deposed James Gottstein in his capacity as the president of Alaska Building, Inc. Mr. Gottstein's deposition testimony established the following facts:

- Plaintiff is seeking 10 percent of any savings achieved by LAA if the lease is voided.<sup>2</sup>
- Plaintiff claims that LAA could save roughly \$21 million over the life of the loan by voiding the current lease, and that Plaintiff would therefore be entitled to a payment of roughly \$2.1 million under its requested relief.<sup>3</sup>
- Mr. Gottstein has experience litigating *qui tam* cases.<sup>4</sup>
- A *qui tam* complaint must be filed under seal in the first instance, and this complaint was not filed under seal.<sup>5</sup>
- According to Mr. Gottstein, this lawsuit is "not really a *qui tam* case."<sup>6</sup>

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<sup>1</sup> LAA takes no position on Plaintiff's request for punitive damages, since that request is not directed at LAA and does not appear to impact LAA. LAA notes that it is difficult to conceive how punitive damages could apply in this case.

<sup>2</sup> A copy of the relevant excerpts of Mr. Gottstein's deposition is attached as Exhibit A. *See* Exh. A at 31:24-25, 32:1-17.

<sup>3</sup> *See id.* at 32:19-25, 33:1-25.

<sup>4</sup> *See id.* at 34:1-7.

<sup>5</sup> *See id.* at 41:3-8.

<sup>6</sup> *Id.* at 41:8, 43:10-12.

- According to Mr. Gottstein, he is unaware of any statute that would authorize Plaintiff's request for 10 percent of any savings.<sup>7</sup>
- According to Mr. Gottstein, he is unaware of any common law that would allow Plaintiff to recover 10 percent of any savings.<sup>8</sup>

### III. ARGUMENT

Under Plaintiff's theory, it would receive in excess of two million dollars for "savings" that the LAA would obtain due to the voiding of its lease with 716 West Fourth Avenue LLC. If awarded, however, all of these "savings" should go to the taxpayers and the LAA. Plaintiff is attempting to enrich itself through an unprecedented claim that it should receive a portion of any "savings" that otherwise would inure to the public's benefit. There is literally no legal support for this novel claim, as Plaintiff's president admitted under oath.

Consistent with Civil Rule 11(b)(2), it does not appear that Plaintiff's claim for 10 percent of any "savings" secured in this case is warranted by existing law or by a nonfrivolous argument for establishing new law. Plaintiff admits that this is not a *qui tam* case under the False Claims Act or any other statute. Congress enacted a comprehensive legislative scheme through the False Claims Act to punish persons who committed a fraud upon the government in violation of that statute, including the possibility that a *qui*

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<sup>7</sup> See *id.* at 43:6-9.

<sup>8</sup> See *id.* at 43:13-18 ("Q. Is there any common law that you can point to to say that a savings of this type had been given to a private litigant? A. No. Well, not yet anyway. So, I mean, it's possible I'll come up with some, but I haven't found – I haven't seen any yet.").

tam plaintiff would receive a portion of any recovery.<sup>9</sup> In that circumstance, there is no room for the creation of additional common law to supplement the statute.<sup>10</sup> There are no common law *qui tam* actions.<sup>11</sup> Even if some *qui tam* theory was viable here, which it is not, a State agency like LAA is not subject to *qui tam* liability under the False Claims Act.<sup>12</sup> Plaintiff's claim for a portion of any "saving" should therefore be precluded.

#### IV. CONCLUSION

For the foregoing reasons, and the reasons described in 716 West Fourth Avenue LLC's original motion, this Court should preclude Plaintiff from receiving any portion of the "savings" that LAA obtains if the lease extension is declared null and void.

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<sup>9</sup> See *Mortgages, Inc. v. United States Dist. Court for the Dist. of Nevada (Las Vegas)*, 934 F.2d 209, 210, 212 (9th Cir. 1991).

<sup>10</sup> "Where, however, Congress has enacted a comprehensive legislative scheme, including integrated procedures for enforcement, there is a strong presumption that Congress did not intend the courts to supplement the remedies enacted. . . . The FCA [False Claims Act] allows no room for the creation of additional federal common law."

<sup>11</sup> See *Vt. Agency of Nat. Resources v. U.S. ex rel. Stevens*, 529 U.S. 765, 768 (2000) (noting that only a handful of statutes currently create a form of civil action known as *qui tam*), 775 (noting that common-law *qui tam* actions fell into disuse after the 14th century in England, but continued to remain technically available for several centuries), 776 (noting that there is no evidence that the Colonies ever allowed common-law *qui tam* actions).

<sup>12</sup> See *id.* at 787-88. Plaintiff's claim is all the more confusing because it appears to accuse the LAA – a State agency – of defrauding the State by entering into a lease to which Plaintiff objects. That is, the State is somehow defrauding itself.

DATED: October 21, 2015

STOEL RIVES LLP

By: 

KEVIN CUDDY  
(Alaska Bar #0810062)  
Attorneys for Defendant  
LEGISLATIVE AFFAIRS AGENCY

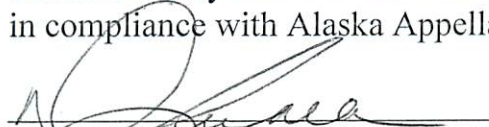
**CERTIFICATE OF SERVICE AND OF FONT**

This certifies that on October 21, 2015, a true and correct copy of the foregoing was served via First Class Mail on:

James B. Gottstein, Esq.  
Law Offices of James B. Gottstein  
406 G Street, Suite 206  
Anchorage, AK 99501  
(Attorney for Plaintiff)

Jeffrey W. Robinson  
Ashburn & Mason  
1227 West Ninth Avenue, Suite 200  
Anchorage, AK 99501  
(Attorneys for Defendant 716 West Fourth Avenue, LLC)

I further certify that this document was substantively produced in Times New Roman 13, in compliance with Alaska Appellate Rule 513.5(c)(1) and Civil Rule 76(a)(3).

  
Debby Allen, Practice Assistant



**In the Matter Of:**

**ALASKA BUILDING vs. 716 WEST FOURTH AVENUE LLC**

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**JAMES GOTTSTEIN - VOLUME I**

*October 16, 2015*

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1                   IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
2                   THIRD JUDICIAL DISTRICT AT ANCHORAGE

3

4       ALASKA BUILDING, INC., an  
5       Alaska corporation,

6

Plaintiff,

7

vs.

8

716 WEST FOURTH AVENUE LLC,  
and LEGISLATIVE AFFAIRS  
AGENCY,

9

Defendants.

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Case No. 3AN-15-05969 CI

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DEPOSITION OF JAMES B. GOTTSTEIN

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VOLUME I

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Pages 1 - 58, inclusive

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Friday, October 16, 2015  
2:00 P.M.

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Taken by Counsel for  
Defendant 716 West Fourth Avenue LLC  
at

21

ASHBURN & MASON  
1227 West 9th Avenue, Suite 200  
Anchorage, Alaska

22

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CERTIFIED  
TRANSCRIPT

1 A-P-P-E-A-R-A-N-C-E-S

2

For Plaintiff:

3

James B. Gottstein  
LAW OFFICES OF JAMES B. GOTTSTEIN  
406 G Street, Suite 206  
Anchorage, Alaska 99501  
907/274-7686

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7 For Defendant 716 West Fourth Avenue LLC:

8 Jeffrey W. Robinson  
Eva Gardner  
9 ASHBURN & MASON  
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12 For Defendant Legislative Affairs Agency:

13 Kevin M. Cuddy  
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Court Reporter:

17

Gary Brooking, RPR  
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19 Anchorage, Alaska 99501

20

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1 the New Seward Highway.

2 So I -- the lawsuit is about declaring it  
3 null and void. And the legislature -- anyway, there  
4 can be --

5 Q. Okay.

6 A. That's -- I mean, I think that the lease is  
7 illegal, and that's -- that's what the lawsuit asks  
8 for declaratory judgment on.

9 Q. And so the lease should end, and then as to  
10 whatever the parties do from that point on, it  
11 should comply with the statute. Is that right?

12 A. Well, like I said, there are numerous  
13 possible scenarios.

14 Q. But all of them require that the lease be  
15 declared null and void and cease to exist so that  
16 the parties can then proceed to comply with the  
17 statute. Isn't that your position?

18 A. Well, it may not be these parties. Like I  
19 said, there might be something else. The  
20 Legislative Information Office might move somewhere  
21 else. So I think -- so what's requested is that the  
22 lease be declared -- I think what I say is illegal,  
23 null and void.

24 Q. Okay. During the August 18 hearing on the  
25 standing issue and motion to sever, you informed the

1 Court that you were looking for the Court to  
2 establish Alaska Building, Inc.'s entitlement to  
3 10 percent of any savings achieved. Do you recall  
4 that?

5 A. It came up, yes.

6 Q. Alaska Building, Inc. does have a personal  
7 stake in this case, does it not?

8 A. I'm not sure what you mean by "personal  
9 stake."

10 Q. Monetary. You have a monetary stake in  
11 this case.

12 A. Other than the 10 percent?

13 Q. No. The 10 percent will do just fine.

14 A. Oh, yeah.

15 Q. The 10 percent is a monetary interest in  
16 the case --

17 A. Yes.

18 Q. -- correct?

19 Okay. And in some of the briefing in this  
20 case, specifically the opposition to the motion to  
21 dismiss or sever, Alaska Building, Inc. asserted that  
22 the amount being paid over the life of the lease was  
23 more than \$21 million more than what was allowed under  
24 the statute. Is that right?

25 A. Yes.



1 Q. And so if you were -- you, Alaska Building,  
2 Inc. was to receive 10 percent of the savings,  
3 that's a minimum of \$2.1 million in savings,  
4 correct? Well, 21 million in savings, but 2.1 is  
5 this 10 percent. Is that right?

6 A. Right. There have been some slight changes  
7 in those amounts with the affidavit of Larry Norene.  
8 But, yes, I mean -- so the State would, you know,  
9 say, end up with 19 million and Alaska Building,  
10 Inc. would get two.

11 Q. Okay. So that --

12 A. The judge expressed some skepticism about  
13 that, and there's a pending motion on that issue.

14 Q. That there is. For today, though, I just  
15 want to focus on this idea of monetary interest.  
16 This 2 million or so that constitutes the  
17 10 percent, does that go back to the taxpayers or  
18 does that go to Alaska Building, Inc.?

19 A. It's -- it's for -- it's to go to Alaska  
20 Building, Inc., because otherwise is -- if it's  
21 successful, the State -- if it wasn't successful,  
22 the State would get none of it, and so this would  
23 be -- well, you could look at it different ways, but  
24 the State would get 19 million and Alaska Building,  
25 Inc. would get two.

1 Q. You have experience litigating qui tam  
2 cases, do you not?

3 A. Yes, some.

4 Q. And in particular, you led the charge in  
5 the US ex rel. Law Project for Psychiatric Rights  
6 versus Matsutani case?

7 A. Yes.

8 Q. The trial judge held in that case that the  
9 public already knew about the alleged misconduct.  
10 Is that right?

11 A. Well, there is -- I wouldn't say that  
12 that's a fair characterization. Under the False  
13 Claims Act, it's a very arcane process or set of  
14 rules, and one of them is what's called the public  
15 disclosure bar.

16 Q. Uh-huh.

17 A. And it's changed over the years, but  
18 basically, if I can recall it, if the -- I forget  
19 what it was, the transit -- but basically if the  
20 facts were disclosed through certain enumerated  
21 sources, including court cases, then -- then the  
22 public disclosure bar would be triggered.

23 And so I filed -- or the Law Project for  
24 Psychiatric Rights had filed a previous lawsuit in  
25 which this was raised in state court, and -- and so



1 that. I would be -- I'd welcome any kind of any  
2 indication of that.

3 Q. Under a qui tam case like you pursued in  
4 the Matsutani case, the complaint is filed under  
5 seal. Is that right?

6 A. Yes.

7 Q. And that was not done here?

8 A. No. It's not really a qui tam case.

9 Q. Okay.

10 A. And...

11 Q. So I think we can agree on that, that this  
12 is not a qui tam case. What is the basis for  
13 claiming an entitlement to 10 percent of the  
14 savings?

15 A. I think that it's -- it's a way to make  
16 real the citizen taxpayers' right to bring actions  
17 on behalf of the government to stop government --  
18 illegal government action.

19 What we had -- from about 1974 through 1998,  
20 the Alaska Supreme Court had established what's called  
21 a public interest exception to Civil Rule 82,  
22 providing that public interest litigants that were  
23 truly suing on behalf of the public were not subjected  
24 to having attorneys' fees against them and would  
25 have -- if they prevailed, would have -- be awarded



1 Q. So thank you for the answer. I'm going to  
2 go back to my original question, which is: What is  
3 the basis for your claim to an entitlement of  
4 10 percent of the fees?

5 A. I just said it.

6 Q. I'm not sure that you have. You gave me a  
7 history lesson about the public interest exception  
8 for Rule 82. Is there a statute?

9 A. No.

10 Q. False Claims Act? This isn't a qui tam  
11 case, right?

12 A. Correct.

13 Q. Is there any common law that you can point  
14 to to say that a savings of this type had been given  
15 a private litigant?

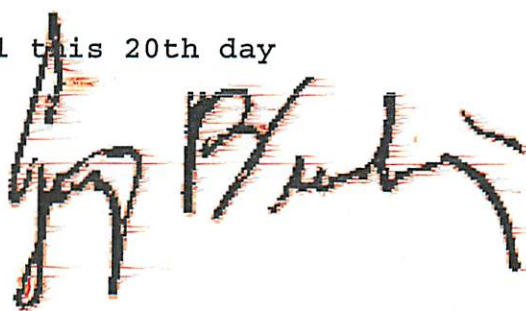
16 A. No. Well, not yet anyway. So, I mean,  
17 it's possible I'll come up with some, but I haven't  
18 found -- I haven't seen any yet.

19 I mean, I think that the -- this is a very  
20 important public issue, and the point is, is that if  
21 this right of public -- the public citizens to sue  
22 over illegal government action is to have any, you  
23 know, reality at all, there needs to be some  
24 countervailing element for the prospect of attorneys'  
25 fees being awarded against a plaintiff if they're

CERTIFICATE

I, GARY BROOKING, Registered Professional  
Reporter and Notary Public in and for the State of  
Alaska, do hereby certify that the witness in the  
foregoing proceedings was duly sworn; that the  
proceedings were then taken before me at the time  
and place herein set forth; that the testimony  
and proceedings were reported stenographically by  
me and later transcribed by computer transcription;  
that the foregoing is a true record of the  
testimony and proceedings taken at that time;  
and that I am not a party to nor have I any  
interest in the outcome of the action herein  
contained.

IN WITNESS WHEREOF, I have hereunto set  
my hand and affixed my seal this 20th day  
of October, 2015.



GARY BROOKING, RPR  
My Commission Expires 6/28/2016

GB4223



**STOEL RIVES LLP**

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OCT 22 2015  
BY: \_\_\_\_\_

Page 1 of 3

1. I am an attorney with the law firm of Stoel Rives, LLP, counsel for Defendant Legislative Affairs Agency ("Agency") in the above-captioned litigation and submit this affidavit in support of Defendant Legislative Affairs Agency's Non-Opposition to 716's Motion for Ruling of Law Precluding ABI's Claims for *Qui Tam* Damages.

2. I have personal knowledge of all facts described herein and affirm all other facts based on my information and belief.

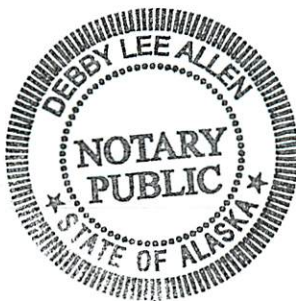
3. Attached as **Exhibit A** to the Legislative Affairs Agency's Non-Opposition to 716's Motion for Ruling of Law Precluding ABI's Claims for *Qui Tam* Damages is a true and correct copy of excerpts from the October 16, 2015 deposition of James Gottstein.

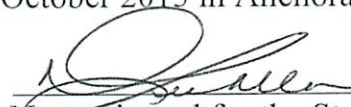
I declare under penalty of perjury that the foregoing is true and correct.

DATED this 21 of October, 2015.

  
\_\_\_\_\_  
KEVIN M. CUDDY

Subscribed to before me this 21 day of October 2015 in Anchorage, Alaska.



  
\_\_\_\_\_  
Notary in and for the State of Alaska  
My Commission expires: 12/17/16

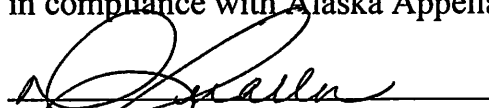
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This certifies that on October 2, 2015, a true and correct copy of the foregoing was served via USPS Priority Mail on:

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Debby Allen, Practice Assistant

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