

IN THE DISTRICT COURT OF THE VIRGIN ISLAND
DIVISION OF ST. THOMAS & ST. JOHN

<p>KH, Gordon Ackley, RV, Johann Clendenin, Jean Persad, Clifford Joseph, Leonard Stephen, Catherine Stephen, Annette Mauvais, Dunel Mauvais, The Fruit Bowl, Inc., and Gasworks, Inc.,</p> <p style="text-align: center;">Plaintiffs/Qui Tam Relators,</p> <p style="text-align: center;">v.</p> <p>Virgin Islands Water & Power Authority, Tantalus Systems, Inc. a/k/a Tantalus Systems Corp., Itron, Inc., and Andrew Smith, John Does 1-10.</p> <p style="text-align: center;">Defendants.</p>	<p>Civil No. 2021/0081</p> <p>QUI TAM</p> <p>&</p> <p>CLASS ACTION COMPLAINT</p> <p>CONSUMER FRAUD & DECEPTIVE BUSINESS PRACTICES ACT</p> <p>JURY TRIAL DEMANDED</p>
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SECOND AMENDED COMPLAINT

The United States of America, by and through qui tam Relators, KH, RV, Gordon Ackley, and Johann Clendenin, bring this action under Title 31 of the United States Code, Sections 3729 *et. seq.* (False Claims Act) to recover damages, injunctive relief, penalties and other remedies. All five individuals have conducted independent investigations and, directly and indirectly, brought the non-functional Itron/Tantalus smart meter system to the attention

of both the federal authorities and have pressed Virgin Islands senators to demand WAPA executives to provide full transparency.

Plaintiffs Gordon Ackley, John Clendenin, Jean Persad, Leonard Stephen, Catherine Stephen, Annette Mauvais, Dunel Mauvais, Clifford Joseph, Gasworks, Inc. and Fruit Bowl, Inc. also bring a procedural due process claim against WAPA for arbitrary billing, threatened termination and/or arbitrary power termination. These two claims are based on federal question jurisdiction.

Plaintiffs Annette Mauvais, Dunel Mauvais, Catherine Stephen, Clifford Joseph individually and on behalf of a class or classes of residential persons similarly situated and Gordon Ackley, Johann Clendenin, Leonard Stephen, and Jean Persad individually and on behalf of a subclass of senior citizens similarly situated as defined below assert Count III, a class action claim pursuant to the United States Virgin Islands' Consumer Fraud & Deceptive Business Practices Act, Title 12A V.I.C. § 301 *et. seq.*, seeking damages, penalties and other remedies. Additionally, The Fruit Bowl, Inc., and Gasworks, Inc., individually and on behalf of a commercial class or classes of persons similarly situated, as defined below, join Count III pursuant to the United States Virgin Islands' Consumer Fraud & Deceptive Business Practices Act, Title 12A V.I.C. § 301 *et. seq.*, seeking damages, penalties and other remedies. This claim is based on diversity jurisdiction in this Court. 28 U.S.C. § 1332. The Class Action Plaintiffs represent 50,000 ratepayers, meet minimal diversity and their

damages exceed \$5 million, which also provides subject matter jurisdiction pursuant to the Class Action Fairness Act ("CAFA"). 28 U.S.C. § 1332(d).

Plaintiffs Gordon Ackley and Johann Clendenin have also brought a failure to warn claim in Count IV and respectfully request that this Court exercise supplemental jurisdiction under 28 U.S.C. § 1367. This claim is substantially related to the other claims and raises U.S. Virgin Islands grid security issues, which impact the continental United States as the Virgin Islands is a border and point of entry.

INTRODUCTION

1. The Water and Power Authority ("WAPA") of the U.S. Virgin Islands is an autonomous government-owned public utility that provides electric and water service to all Virgin Islands ratepayers, both residential and commercial customers. In 2015, WAPA contracted with Defendants Tantalus and Itron to replace its customers' analog meters with the Tantalus/Itron Advanced Metering Infrastructure "AMI" "smart grid" system with digital Itron Meters.
2. Defendants Tantalus and Itron wrongly claimed that if WAPA agreed to install their AMI "smart grid" system, WAPA would then have automatic, remote reporting of WAPA's customers' energy consumption for billing purposes and could save money by terminating its meters readers. Based on these misrepresentations, WAPA eliminated all or substantially all of its meter reader workforce.

3. For decades, the typical WAPA customer has had no avenue of redress if they received a questionable bill. WAPA's customers have had only two choices: Pay the disputed bill or lose their electrical service. After the \$16 million Tantalus/Itron AMI "smart grid" system was installed, nothing changed. Indeed, the situation for ratepayers only worsened.
4. Since Defendants Tantalus, Itron and John Does' AMI "smart grid" system was installed in the US Virgin Islands, WAPA's customers have received and continue to receive wildly inaccurate and excessive bills which they must either pay or risk losing service. Further, the Tantalus/Itron AMI Smart Meter System's non-functionality has created a catastrophic domestic and national security risk. The Virgin Islands is a port of entry to the United States.

PARTIES AND JURISDICTION

5. Plaintiff/Qui Tam Relator KH resides with his family in the US Virgin Islands and is one of many customers harmed by WAPA's billing practices. Additionally, since the Tantalus/Itron AMI "smart grid" system was installed, WAPA has mailed him exorbitant bills not based on actual usage.
6. Plaintiff/Qui Tam Relator RV resides in the US Virgin Islands and is one of WAPA's customers harmed by WAPA's discriminatory billing practices. Since the Tantalus AMI "smart grid" system was installed and he was connected to it, he was unlawfully billed for electricity that he and his family did not use. He has received unexplained, extraordinary bills.

7. Plaintiff /Qui Tam Relator Gordon Ackley has a residential WAPA account. After the Tantalus AMI “smart grid” system was installed, he was unlawfully billed for electricity that he did not use. He, too, has received extraordinary bills not based on actual usage. WAPA disconnected Ackley due to a \$8553 overbilling. Although WAPA reconnected his power, on September 23, 2023, WAPA threatened to disconnect Ackley for failure to pay the \$8553 overbilling. On October 18, 2023, WAPA again threatened to disconnect him for failing to pay the admitted \$8553 overbilling.
8. Plaintiff/Qui Tam Relator Johann (John) A. Clendenin, Lt. Col., USMC (Retired), is 75 years old and a 38-year Marine Veteran, who specialized in telecommunications. He resides in the Virgin Islands and served as a Commissioner with the VI Public Services Commission (PSC) from 2013 to 2019; he served as the PSC Chair in 2014, 2015, and 2016. After the Tantalus AMI “smart grid” system was installed and was connected, Clendenin was unlawfully billed for electricity that he did not use. This is an ongoing problem.
9. Plaintiff Jean Persad is 82 years old and a St. Thomas resident. Since the Tantalus AMI “smart grid” system was installed and she was connected to it, she was unlawfully billed for electricity for two unoccupied apartments, which has caused her inordinate stress. (\$1,000 each month for each

apartment). She is recovering from a stroke and, on her behalf, her son attempted to reason with WAPA's customer service to no avail.

10. Clifford Joseph resides in St. Croix. WAPA bills Joseph for energy not consumed. Although it began beforehand, Joseph installed an off-grid solar system in November 2023; WAPA continues to send Joseph monthly invoices for over \$300. Joseph has complained to WAPA to no avail.
11. Annette Mauvais and Dunel Mauvais, husband and wife, received WAPA bills that were obviously not based on actual usage. Consequently, they contracted with First Solar to install a solar system for over \$40,000. Although it was installed in June of 2023, WAPA and DPNR have refused to issue the permits. Annette Mauvais and Dunel Mauvais are now paying both a monthly payment for solar and WAPA.
12. Catherine Stephen is married to Leonard Stephen; they are residents of St. John. Her husband, Leonard, is deaf and Catherine handles the finances. WAPA has sent the Leonards bills for energy that they did not consume.
13. Commercial Class Action Plaintiff Gasworks, Inc. (Gasworks) owns and operates a gas station and convenience store located in St. Thomas. Gasworks is a corporation organized under the laws of the U.S. Virgin Islands. Since the Tantalus AMI "smart grid" system was installed and was connected, WAPA has unlawfully billed Gasworks for electricity not based on actual consumption.

14. Commercial Class Action Plaintiff Fruit Bowl, Inc. (Fruit Bowl) owns and operates a grocery store located in St. Thomas. Fruit Bowl is a corporation organized under the laws of the U.S. Virgin Islands. Since the Tantalus AMI “smart grid” system was installed and was connected, WAPA has unlawfully billed Fruit Bowl for electricity not based on actual consumption.
15. Defendant Tantalus Systems, Inc. a/k/a Tantalus Systems Corp (“Tantalus”) is a publicly-traded corporation duly organized and existing under the laws of the State of Delaware since May 12, 2010, and having its principal place of business at 1121 Situs Court, Suite 190, Raleigh, NC 27606. Defendant’s registered agent is RL&F Service Corp., 920 N. King St., Fl. 2, Wilmington, DE 19801. Upon information and belief, along with Tantalus products and services, Tantalus also acts as some sort of General Contractor for AMI “smart grid” systems.
16. Upon information and belief, Defendant Itron, Inc., which may also be known as Itron Networked Services, Inc. (“Itron”), is a corporation organized and existing under the laws of the State of Washington and maintains its principal place of business at 2111 N. Molter Road, Liberty Lake, Washington. Upon information and belief, Itron is a technology provider to the global energy and water industries, purportedly providing hardware, data collection and utility software solutions in the “smart grid” industry. Itron also manufactures the smart meters installed into the Virgin Islands’ electrical grid.

17. Defendant Virgin Islands Water & Power Authority (“WAPA”) is an autonomous government instrumentality that provides 100% of the electricity to residential and commercial customers.
18. Defendant Andrew Smith is an individual who now resides in St. Thomas, US Virgin Islands; he has served as WAPA’s Executive Director and CEO since January 10, 2022. Defendant Andrew Smith is sued in his official capacity for affirmative injunctive relief, namely mailing or emailing WAPA’s ratepayers bills reflecting actual usage only, along with any fees and costs to which Plaintiffs are entitled to recover.
19. Defendant John Does 1 through 5 are corporations, companies or other entities whose identities are currently unknown to Plaintiffs/Qui Tam Relators. Therefore, Plaintiffs sue such Defendants by such fictitious names. Plaintiffs/Qui Tam Relators are informed and believe, and upon such information and belief allege, that such John Doe defendants designed and/or manufactured and/or placed into the stream of commerce the Tantalus/Itron AMI (Advanced Metering Infrastructure) “smart grid” system, or a component thereof, which Plaintiffs/Qui Tam Relators allege gave rise to the claims in this matter, and/or who warranted that the **hardware system/devices** would accurately measure and report Plaintiffs/Qui Tam Relators' electricity usage. The Tantalus AMI “smart grid” system did not and does not accurately measure and report Plaintiffs/Qui Tam Relators' electricity usage.

20. Defendant John Does 6 through 8 are corporations, companies or other entities whose identities are currently unknown to Plaintiffs/Qui Tam Relators. Therefore, the Relators sue such Defendants by such fictitious names. Plaintiffs/Qui Tam Relators are informed and believe, and upon such information and belief allege, that such John Doe Defendants designed and/or manufactured and/or placed into the stream of commerce the **wireless communications system**, including its component parts, which purportedly transmits the information from the Smart Meters which Plaintiffs/Qui Tam Relators allege gave rise to their claims in this matter to WAPA, and/or who warranted that the wireless communications system, including its component parts, would accurately report Plaintiffs/Qui Tam Relators' electricity usage to WAPA. Plaintiffs/Qui Tam Relators are informed and believe and thereon allege that the wireless communications system, including its component parts, did not and does not accurately report Plaintiffs/Qui Tam Relators' electricity usage to WAPA.
21. Defendant John Does 9-10 are corporations, companies or other entities whose identities are currently unknown to Plaintiffs/Qui Tam Relators, and therefore sue such Defendants by such fictitious names. Plaintiffs/Qui Tam Relators are informed and believe, and upon such information and belief allege, that such John Doe Defendants designed and/or manufactured and/or placed into the stream of commerce **the software**

which monitors and processes the data received from the wireless communications system, including its component parts, which purportedly transmits the information from the Smart Meters which Plaintiffs/Qui Tam Relators allege gave rise to their claims in this matter to WAPA, and/or who warranted that the software would accurately report Plaintiffs/Qui Tam Relators' electricity usage and/or identify any discrepancies in the data being reported. Plaintiffs/Qui Tam Relators are informed and believe and thereon allege that the software, including its component parts, did not and does not accurately report Plaintiffs/Qui Tam Relators' electricity usage to WAPA.

22. Venue in this action is proper in the United States District Court for the US Virgin Islands because all material acts alleged in this action occurred in the U.S. Virgin Islands, and the causes of action alleged herein accrued in the U.S. Virgin Islands. Thus, venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

Count I and Count II arise under Federal Question Jurisdiction

Denial of Due Process

23. Count I is brought under 42 U.S.C. §1983:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress...

24. WAPA overbills its customers as a result of the non-functional Tantalus/Itron AMI “smart grid” system. When some customers cannot pay, WAPA has violated its customers' due process rights by unlawfully terminating and threatening to terminate their electric service without any formal avenue to dispute the charges. WAPA’s terminations and threats of termination qualify for state action within the purview of the Civil Rights Acts, and thus provides federal jurisdiction pursuant to 28 U.S.C. §1343.¹

False Claims Act

25. Count II is brought under the False Claim Act (FCA) and provides this Court with federal question jurisdiction under 28 U.S.C. § 1331.
26. The FCA is the only real functioning example of an optimally designed avenue of private justice. 31 U.S.C. § 3729 *et. seq.*
27. Defendants WAPA, Tantalus, Itron and John Does falsely represented the functionality and the technological aspects of the Tantalus/Itron AMI “smart grid” system that they designed, sold and/or manufactured and installed into the US Virgin Islands power grid.
28. Defendants WAPA, Tantalus, Itron and John Does knew that this false information was provided to the United States Department of Agriculture, RUS Division so WAPA could obtain a \$13 million loan. Upon information

¹ Section 1343(a)(3) provides: To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

and belief, WAPA still owes \$11 million for the defective, non-functioning Tantalus/Itron AMI “smart grid” system. Moreover, WAPA continues to replace faulty components with the same components.

29. Defendants WAPA, Tantalus, Itron and John Does were obligated to conduct final Performance Testing prior to release of the performance bond.
30. This Performance Testing includes someone in WAPA actually signing off that the Tantalus/Itron “Smart Meter” system is/was installed properly, communicating and functioning as contractually promised.
31. The Tantalus/Itron “Smart Meter” system did not communicate and function as contractually promised and the Defendants concealed the non-functionality of the system.

Count III arises under Diversity Jurisdiction

32. Count III is a class action complaint against Defendant Itron, Defendant Tantalus, and John Doe Defendants pursuant to the Virgin Islands Consumer Fraud & Deceptive Business Practices Act. 12A V.I.C. § 301, *et. seq.*
33. Plaintiff Gordon Ackley is a 67-year-old resident of the U. S. Virgin Islands. John Clendenin is a 75-year-old resident of the U.S. Virgin Islands. Jean Presad is an 82-year-old resident of the U.S. Virgin Islands, who had a stroke and is recovering in her daughter’s home located in Orlando, FL.
34. KH is a resident of the U.S. Virgin Islands.
35. Gordon Ackley is 67-year-old St. Thomas resident who has suffered over \$75,000 in damages. Due to the overbilling, the termination and continued

threats of termination, Ackley was forced to install a 35-kilowatt solar system with a battery backup. Thus, Gordon Ackley brings claims on behalf of WAPA's residential ratepayers.

36. Class Action Plaintiff Gasworks has incurred damages exceeding \$75,000. Due to overbilling, Gasworks was forced to install a huge solar panel array, which is tied into the WAPA electrical grid. Even with a 500-panel solar array, WAPA bills Gasworks over \$10,000 a month for energy not consumed.
37. The Commercial Class Action Plaintiffs, Gasworks and Fruit Bowl are residents of the U.S. Virgin Islands and they bring suit on behalf of WAPA's commercial ratepayers.
38. Again, Class Action Plaintiffs represent 50,000 ratepayers, meet minimal diversity and the claims exceed \$5 million providing subject matter jurisdiction pursuant to the Class Action Fairness Act ("CAFA"). 28 U.S.C. § 1332(d).

Defendants

39. Defendant Itron is a resident of the State of Washington; and Defendant Tantalus is a resident of the State of North Carolina.
40. Pursuant to Title 28, Section 1332, this Court has diversity jurisdiction over the claims against Defendant Itron and Defendant Tantalus as alleged in Count V.

Supplemental Jurisdiction is Warranted due to Security Threat.

41. This Court may exercise supplemental jurisdiction over **Count IV** (Failure to Warn of Catastrophic Risk) as the non-functionality of the Tantalus/Itron AMI Smart Grid system involves serious security issues in a jurisdiction that is a point of entry to the United States.

FACTUAL ALLEGATIONS

Unlawful Billing.

42. The US Virgin Islands ratepayers pay three to four times the national average per kWh of electricity, allegedly due to dependency on fuel oil and LPG gas. Upon information and belief, WAPA has stated that it needs to increase rates by 50%, at least in part, to resolve the non-functionality of the Tantalus/Itron “smart grid” system. The VI ratepayers cannot afford and should not be saddled with a “smart grid” system that does not accurately reflect the electricity that they have consumed.

43. WAPA is required to charge its customers based on the amount of electricity actually used, measured in kilowatt hours, in addition to what is referred to as a LEAC charge (Levelized Energy Adjustment Clause).

44. WAPA is required by Virgin Islands’ law to read each meter monthly, but admittedly does not do so.² In fact, in reliance on Defendants Tantalus and

² 30 VIC § 125 provides:

(a) The electric power service meters shall be read at least once every month by

Itron's misrepresentations, WAPA laid off and/or terminated the majority of its meter readers after the so-called installation of the Tantalus/Itron "smart grid" system, which did not work properly from the outset.

45. WAPA is also prohibited by Virgin Islands' law from back-billing its customers, with limited exceptions. As has become a pattern, WAPA ignores this Virgin Islands' consumer protection law. 30 VIC §127.
46. WAPA spent over \$16 million on the Tantalus/Itron AMI "smart grid" system. WAPA financed this venture by applying for a \$13 million loan from the US Department of Agriculture, RUS Division. WAPA owes a balance of almost \$11 million for the Tantalus/Itron "smart grid" system that was never fully functional.
47. Since the installation of the Tantalus/Itron AMI "smart grid" system, WAPA has sent, and continues to send bills to its customers that do not reflect their actual usage. WAPA estimates and/or simply fabricates its customers' usage.
48. WAPA's incorrect billing is purportedly based on its estimated electrical usage of its customers instead of the actual amount of electricity consumed by its customers. Even such "estimates" have no legitimate basis in fact.

duly trained personnel of the Authority.

(b) At the time of reading the meter, the Authority employee making the actual reading shall leave a written notice informing the subscriber of the results of the reading affixed to the meter or in a convenient place likely to be found by the subscriber as evidence of the reading

49. WAPA claims that it resorts to estimating accounts only when the automated system or meter readers cannot secure actual readings.
50. In response to inquiries, in December 2016, Niel Vanterpool, then WAPA's Director of Transmission and Distribution, admitted that, "the percentage of estimated bills are not tracked as the amount can vary greatly from month to month." In addition, Vanterpool explained that, "the system cannot estimate for more than 3 months." Vanterpool then admitted that, "[i]n those occurrences, the Edit clerks manually enter a "C" code, which indicates the account was billed by consumption."
51. By statute, pursuant to a clear and convincing standard, WAPA bears the burden of proof that the ratepayers' meters were actually read. 30 V.I.C. § 127(c).
52. Despite knowing there were and are problems with the Tantalus/Itron AMI "smart grid" system,³ WAPA did not and does not provide any procedural due process for a consumer to dispute an unusually high bill. WAPA's policy is to first threaten, then terminate the service of the average Virgin Islands' consumer, and then unabashedly charge that consumer a re-connect fee,

³ Many, including some government officials, say that the touted benefits of "smart" systems have not materialized, while the negative ramifications have proven disastrous. <https://www.westonaprice.org/health-topics/environmental-toxins/smart-meters-not-so-smart/>; In Puerto Rico, smart meters were hacked en masse resulting in wide-spread billing fraud. <http://krebsonsecurity.com/2012/04/fbi-smart-meter-hacks-likely-to-spread/>. The FBI warns that insiders and individuals with only a moderate level of computer knowledge are likely able to compromise meters with low-cost tools and software readily available on the Internet. Kentucky, Massachusetts, New Mexico, Virginia Officials Say No to "Smart" Meters Due to Cost and Ineffectiveness.

leaving their customers with no option but to pay the erroneous bill or to go without electricity. WAPA does not tell its ratepayers that they may seek relief from the PSC.

53. Although a customer may petition the PSC with respect to an extraordinary bill, it is not mandatory.⁴ Indeed, Plaintiff Johann Clendenin, who was a PSC Commissioner, complained to WAPA about his invoices that he knew were not based on actual usage to no avail. If a PSC Commissioner is unable to obtain legitimate bills, it is reasonable to infer that the average ratepayer's chances are slim to none.
54. Even if a ratepayer seeks relief from the PSC, the PSC has no procedures, including notice and/or a hearing, to resolve ratepayers' complaints.
55. Many of WAPA's ratepayers, with the means to do so, have been forced to install alternate energy systems.

Background of The Itron/Tantalus AMI "Smart Grid" System.

56. Under WAPA Director Hugo Hodge's direction, the WAPA explored installing an AMI (Advanced Metering Infrastructure)" smart grid" system.⁵

⁴ 30 VIC 23(c) provides in pertinent part: Ratepayers must first attempt to resolve the dispute directly with the public utility. A ratepayer **may** present a dispute to the Public Services Commission for resolution only after the public utility and the ratepayer have failed to resolve the dispute in a manner satisfactory to the ratepayer. (emphasis added).

⁵ There are two main types of smart meters: automatic meter reading (AMR) and advanced metering infrastructure (AMI). AMR meters purportedly use one-way communication and primarily act as digital "meter readers." This is done by constantly emitting data via RF radiation, so that when a utility vehicle drives by, the reading can be picked up and logged. AMI meters purportedly use two-way communication to both

57. WAPA represented that the Tantalus/Itron “smart meter” system was going to save WAPA and its customers “a lot of money in the long run” because WAPA could eliminate the expense of meter readers and consumers could monitor their real time usage and conserve. Inherent in this representation is that WAPA ratepayers would be charged based on their actual consumption and could exercise control over the charges by conserving electricity. Defendant Tantalus and Defendant Itron knew and/or should have known those representations to be wholly untrue.
58. WAPA’s customers, were not allowed to opt out of the Tantalus/Itron AMI “smart grid” system and keep their analog meters.
59. The overarching technological components of AMI “smart grid” system include:
- **Smart Meters-** Advanced meter devices having the capacity to collect information about energy, water, and gas usage at various intervals and transmitting the data through fixed communication networks to utility, as well as receiving information like pricing signals from utility and conveying it to consumer. Smart meters are essentially computers with a life of between 5 and 7 years that have to be maintained with software upgrades, etc. (By contrast, the life of an analog meter is 20-30 years).
 - **Communication Network:** Advanced communication networks which supports two-way communication enables information from smart meters to utility companies and vice-versa. Networks such as

transmit usage information and perform observation and maintenance tasks. However, instead of needing to rely on a vehicle driving by to relay the information, they use existing networks and infrastructure to constantly send usage data back to the utility companies’ servers.

Broadband over PowerLine (BPL), Power Line Communications, Fiber Optic Communication, Fixed Radio Frequency or public networks (e.g., landline, cellular, paging) are used for such purposes.

- **Meter Data Acquisition System-** Software applications on the Control Centre hardware and the DCUs (Data Concentrator Units) used to acquire data from meters via communication network and send it to the MDMS
- **Meter Data Management System (MDMS):** Host system which receives, stores and analyzes the metering information.

60. On or about March 5, 2014, and via subsequent change-orders, WAPA entered into contractual terms with Defendants Tantalus and Itron⁶ for the purchase of their AMI “smart grid” system, financed by a 20-year \$13 Million USDA loan to be satisfied in 2034. WAPA claimed the Tantalus/Itron AMI “smart grid” system would be phased-in and operational by June 2015.⁷
61. Defendant Tantalus and Defendant Itron guaranteed 100% coverage for the three islands of St. Thomas, St. John and St. Croix. The two-way, multi-

⁶ Itron provides metering technology; Tantalus provides the data communications network that delivers the data needed for Smart Grid applications. Itron manufactures solid state Centron meters. <https://www.tdworld.com/smart-utility/article/20963564/centron-meters-integrated-with-tantalus-communications-modules>

⁷ In December 2007, both houses of the US Congress passed and President George W. Bush signed into law the [Energy Independence and Security Act \(EISA\)](#). Tucked away in the back pages of this 310-page piece of legislation is the description and de facto mandate for national implementation of the Smart Grid system. The Obama Administration Department of Energy (DOE) and the U.S. Department of Agriculture (USDA) were among federal heavyweights behind the thundering AMI rollout. In 2009, a time of national economic crisis, the federal government allocated \$11 billion in taxpayer funds to develop the “smart grid” system. Several universities and corporations profited hugely by providing AMI equipment, software and expertise. These corporate beneficiaries include General Electric, IBM, Hewlett Packard, Siemens, Toshiba, Microsoft, Cisco, Verizon, Google, Itron and Tantalus.

purpose platform that was supposed to enable access to data to power advanced Smart Grid applications contracted for was never functional as represented. Defendant Tantalus and Defendant Itron's representations that WAPA's customers could monitor energy consumption "real time", conserve energy and save money were never realized. WAPA terminated its meter readers based on the Tantalus/Itron's misrepresentations.

62. Defendant Itron and Defendant Tantalus represented that "the Itron-Tantalus solution . . . is designed to cost-effectively leverage as much existing infrastructure as possible, including fiber and microwave backhaul technology, over extremely rugged terrain."⁸ Upon information and belief, this representation was also factually baseless.
63. Defendant Itron and Defendant Tantalus also claimed that the system's life was 15 years, which is contrary to industry experts' opinions (5-7 years). Indeed, the warranty for the 50,000 meters was limited to only three years. Why the USDA RUS entered into a 20-year financing agreement for \$13 million is mind-bogglingly unclear.
64. When the PSC confronted WAPA officials about ratepayer billing complaints, WAPA's story was the same time after time – the installation of the system was not complete. During Johann Clendenin's tenure, WAPA officials lied, deflected, and did not admit that the meters were failing in the thousands.

⁸ <https://www.tantalus.com/2014/03/05/virgin-islands-water-and-power-authority-selects-itron-and-tantalus-for-advanced-metering-infrastructure/>

They also concealed the fact that the communication system was non-functional.

Cyber-attack is a real threat.

65. Additionally, by installing the Tantalus/Itron dysfunctional AMI "smart grid" system, Defendants have created an environment in the US Virgin Islands' electrical grid whereby it has been made more vulnerable to cyber-attacks as there is little, if any, cyber security.
66. Upon information and belief, over 50,000 meters have been installed in the Virgin Islands to date.⁹ It cannot be said enough that WAPA, Tantalus and Itron knew, have known and/or should have known that the communication aspect of the system was not functional from the outset; that the Tantalus/Itron AMI "smart meter" system did not and would not provide US Virgin Islands residents with access to real time usage; that the meter readings were not and are not electronically transmitted to WAPA's billing offices; and a majority, if not all, of the "smart meters" were, and continue to be, non-functional.
67. The Tantalus/Itron AMI Smart Meter system has provided hackers with 50,000 additional points of access to the Virgin Islands electrical grid.
68. The US Virgin Islands is a United States Border. It is no secret that, when the electrical grid is down, there is a dramatic increase in drug, weapons,

⁹ <https://stcroixsource.com/2015/04/23/wapa-representatives-explain-smart-metering/>;

and human trafficking coming through the US Virgin Islands, often destined for the mainland United States.

Kickbacks & Incestuous Business Relationships

69. For years, WAPA has avoided disclosing that the Tantalus/Itron AMI “smart grid” system is not communicating actual consumption data from its customers to WAPA. Further, WAPA rigs the data. After three months, the “estimated” bills are changed to “C” to purportedly but wrongly reflect “actual consumption.” The statistics provided to the public and the legislature are based on this rigged data.
70. WAPA concealed that the Itron smart meters were failing in the thousands prior to Hurricanes Irma and Maria in 2017. From 2016 through 2020, WAPA also concealed that the meters were not communicating its customers’ power usage back to WAPA. WAPA executives lied and deflected inquiries from its own Board members and from the PSC Commissioners about the specifics and the functionality of the Tantalus/Itron AMI Smart Grid system.
71. When it was announced WAPA was not going to renew Executive Directors Hugo Hodge’s contract, on or about January 25, 2016, the WAPA Board terminated Hodge’s contract five (5) months early, and awarded him a \$235,000 golden parachute.
72. During his tenure with WAPA, Hugo Hodge never initiated a claims process or lawsuit against Defendant Tantalus and Defendant Itron for failure to deliver a functioning AMI Smart Meter system.

73. On the other hand, Hugo Hodge, while working for Tantalus in 2016, made sure Tantalus and Itron got paid.
74. On or about April 12, 2016, Hodge accepted employment with Tantalus as General Manager of the Caribbean Basin.
75. While employed with WAPA, Clinton Hedrington, Gregory Rhymer and Julio Rhymer have served in various executive functions, including Chief Operating Officer, Chief Financial Officer, COO of the Electrical System, and Acting Executive Director; Niel Vanterpool served as WAPA's Director of Transmission and Distribution.
76. After Hurricane Irma and Hurricane Maria, WAPA officials insisted on continuing WAPA's business relationship with Defendant Tantalus and Defendant Itron. Again, one or more of the PSC Commissioners objected due to the non-functionality of the Tantalus/Itron system prior to the Hurricanes.
77. A Bloomberg Foundation Associate assigned by Governor Kenneth Mapp to WAPA asked Clinton Hedrington, Niel Vanterpool, Julio Rhymer, and Gregory Rhymer¹⁰ about various irregularities, including but not limited to the non-functionality of the Tantalus/Itron AMI "Smart Meter" system prior to the

¹⁰ Gregory Rhymer served as WAPA's Chief Operating Officer and was called out for demanding and receiving kickbacks from ABC Concepts on Contract SC-12-13; SC-22-13; and SC-24-13. https://viconsortium.com/caribbean-top_stories/virgin-islands-10000-bribe-job-that-cost-174000-given-to-contractor-for-1-1-million-allegations-against-wapas-gregory-rhymer-aplenty-but-board-wants-to-rehire-him

Hurricanes. Hugo Hodge, Clinton Hedrington, Niel Vanterpool, Julio Rhymer, and Gregory Rhymer directly and indirectly threatened the Bloomberg Foundation Associate that if he did not leave the US Virgin Islands, he would disappear.¹¹

78. A number of PSC members, including Johann Clendenin, unsuccessfully objected to the installation of the Tantalus/Itron AMI Smart Grid system. WAPA installed it anyway. A number of PSC members, including Johann Clendenin, objected to continuing to do business with Tantalus and Itron for restoration work after the Hurricane Irma and Hurricane Maria in 2017. WAPA continued to do business with Tantalus and Itron over their objections.
79. After Hurricane Irma and Hurricane Maria in September 2017, WAPA executives avoided the vetting process for contracts for over two years based on the emergency exception for public procurement. 31 V.I.C. § 239. WAPA executives entered into contracts without going to open market for bids were no longer vetted by a three-person Committee inside WAPA and were no longer scrutinized by the WAPA board. The multitude of change orders also escaped vetting and scrutiny.

¹¹ On November 30, 2021, Jean Greaux, WAPA's former Communications Director, a devout Catholic, who played the organ every Sunday and carried a huge wood cross at Easter, was found dead of alleged suicide a shot gun injury to the chest. Jean Greaux was the original whistleblower that the smart meter system was non-functional. Community Mourns the Loss of Jean Greaux, The St. Thomas Source (December 1, 2021) (<https://stthomassource.com/content/2021/12/01/community-mourns-the-loss-of-broadcaster-journalist-jean-p-greaux-jr/>)

80. When Johann Clendenin objected about various WAPA irregularities, including but not limited to continuing to do business with Defendant Itron and Defendant Tantalus after the Hurricanes given the non-functionality of the system, it led to his termination as a Commissioner based on blatantly obvious and meritless pretext. See, **Exhibit 2** (Senator Gittens letter to Governor).
81. Shortly thereafter, on or about February 27, 2020, an AMI Smart Grid consulting expert gave a presentation to “restore” the Tantalus/Itron AMI Smart Grid system and estimated that it would cost a staggering \$123 million in order to provide a fully functional AMI Smart Grid system. The WAPA Board was speechless.
82. On January 28, 2021, Niel Vanterpool was arrested for criminal conflict of interest violations with respect to the Tantalus/Itron AMI “smart grid” project. WAPA suspended Vanterpool, albeit with pay. In July 2023, Vanterpool entered an Alford plea to a charge of soliciting kickbacks by steering a \$3 million contract to an LLC in which he held an interest.¹²
83. After Hurricane Irma and Hurricane Maria, through FEMA’s Public Assistance program, the federal government has approved \$721.7 million to harden electrical distribution systems and substations on St. Thomas, St. John, St.

¹² Suzanne Carlson, WAPA Official to Plead Guilty to Kickback Scheme, Virgin Islands Daily News (July 11, 2023); Ernice Gilbert, WAPA Leadership Shakeup Takes Hold as Rhymmer Resigns and Hedrington is Set to Leave; Kupfer, Whose Planned Exit Was March 10, Has Gone on Leave Through His Last Day, V.I. Consortium (March 8, 2021). https://www.virginislandsdailynews.com/news/wapa-official-to-plead-guilty-to-kickback-scheme/article_88572fd9-3289-5472-a462-7559dd2348e1.html

Croix and Water Island. There have been tens of millions in taxpayer monies made available for renewable energy.

84. Hugo Hodge has returned to the Virgin Islands as an energy consultant and was able to obtain government contracts for huge renewable energy projects, doing business as HTK Energy, LLC.¹³
85. WAPA's story changes when its leadership changes. On May 11, 2023, and after Plaintiffs' original Complaint was unsealed and its contents circulated, WAPA Director Andrew Smith admitted but minimized the problem, telling "the Public Services Commission that about 1,000 meters are breaking down each month in the territory (and that) WAPA has analyzed the failing system, according to Smith, and found the problem is a capacitor that deteriorates and then affects the communication mechanism. Smith reported that when a meter fails, it is replaced with the same AMI model, but WAPA is working on a more permanent solution."
86. Andrew Smith has recently suggested that millions, if not tens of millions of taxpayer dollars should be spent on laying fiber to each of the approximately Itron 50,000 meters installed in the Virgin Islands to resolve the communication problem. Smith's justification is that the Virgin Islands'

¹³ GERS Turns to Former WAPA CEO Hodge for Havensight Energy Plan, St. Thomas Source (September 28, 2021) (Contract issued to Hodge despite bidding irregularities and over objections) <https://stthomassource.com/content/2021/09/28/gers-turns-to-former-wapa-ceo-hodge-for-havensight-energy-plan/>; Hodge does business as HTK Energy, LLC. <https://www.hktenergy.com/projects-6>

ratepayers do not have to foot the bill as WAPA may obtain federal grants to pay for the installation of the fiber.

Intentional Concealment of Contractual Specifications

87. The specifications of the Tantalus/Itron AMI “smart grid” system have not yet been definitively established because it has been impossible to obtain a copy of all of the substantive contract documents. These will be pursued in discovery.
88. The Plaintiffs disclosed the meter and fraudulent invoice problems to Senators and former-Senators in 33rd, 34th, and 35th Virgin Islands legislative bodies and requested that they force WAPA to disclose the problems and the contractual agreement related to the Smart Meter system.
89. Although WAPA is allegedly subject to the VI Sunshine Laws, requiring transparency,¹⁴ WAPA and its executives have repeatedly refused to produce any details or copies of its contracts including but not limited to the contract with Tantalus and/or the sub-contractors including but not limited to the 33rd, 34th, and 35th Virgin Islands legislative bodies.

¹⁴ The PSC claimed that WAPA refused to provide it the VITOL fuel agreements. This seems suspect given the Inspector General’s report of November 29, 2021. WAPA also concealed the fact that it abandoned a \$7-8 million generator in Minnesota until confronted by VI Legislature. See, SIGMA v. VIWAPA, 19 HA-CV 15-2470, which is the tip of the iceberg given the VI IG report.

90. WAPA and Tantalus have continued to obstruct all efforts to obtain the contractual documents incorporated by reference and the exhibits, which contain the substantive terms.¹⁵
91. On June 14, 2023, the media reported that US Virgin Islands Senate Majority Leader Kenneth L. Gittens successfully sponsored an override of a bill vetoed by the Governor in April 2023 that will provide the Virgin Islands Inspector General's Office with \$250,000 to audit various operations of WAPA, including the AMI "Smart Meter" contract.¹⁶
92. Governor Bryan has described the relationship between WAPA executives and the WAPA Board members as a "Bloods and Crips mentality." There is good reason. If a contract exceeds \$200,000 WAPA executives must go to the Board for approval. The Board is often blind-sided by WAPA's request for approval of contracts that have not been placed on the agenda. Further, when questioned, WAPA's executives are not able to answer questions about the bidding process, who bid on the contracts, and are vague about the source of the funds for the project.

¹⁵ Tantalus Contract Exhibit IV includes details of communication capital projects that include GPS/GIS, SCADA DA, AMI/AMR, Communication Equipment, MWM and AVL and Crew Management, MDM, OMS IVR which are described within a separate Work Plan document.

¹⁶ Governor Albert A. Bryan Jr. has twice vetoed the measure, which calls for the Inspector General to take a closer look at WAPA's contract with propane supplier VITOL, the AMI meter reading contract and the \$2 million lost to an "offshore account".

"We must continue to seek accountability at WAPA on behalf of the people," Senator Gittens said. "There must be a fundamental change of the culture of waste, fraud and abuse within the utility where these bad contracts, major losses and cost overruns were allowed to happen."

93. For approximately two years after Hurricanes Irma and Maria, based on an emergency exemption, WAPA executives entered into one contract after another with no oversight.
94. When WAPA Board oversight resumed, in one meeting after another, Board member Hubert Turnbull pressed WAPA for information and WAPA was evasive. For example, on September 26, 2019, Member Turnbull asked for answers to what he coined his “three standing questions”: The contract, the budget number, and the competitive bidding. This obfuscation is systemic with WAPA; Tantalus and Itron remained as contractors due to this lack of oversight.
95. Johann Clendenin experienced the same difficulties at the PSC. When WAPA executives presented a contract related to a rate increase, the essential exhibit containing the substantive terms was not attached. Clendenin asked three times for Exhibit C to the VITOL contract and each time WAPA responded with, what he described as an after-the-fact manufactured “Exhibit C.”

FOIA requests were futile.

96. On or about March 13, 2021, a FOIA request was made to the USDA RUS to obtain a copy of the WAPA/Tantalus contract. The USDA had 30 days (20 business days) to provide a response. The USDA caseworker reported that they could not locate the Tantalus contract. This case worker, Marius President, explained that WAPA (and Tantalus) had 30 days to object based

on confidentiality. It was explained to Mr. President that WAPA was subject to the Virgin Islands Open Records Act (“Sunshine laws”) and was not subject to the USDA FOIA regulations that protect “confidential” information. On the last day to respond, the USDA caseworker, Mr. President, produced a copy of the contract but did not provide the exhibits incorporated by reference that include the necessary substantive terms. When this deficiency was pointed out, the USDA RUS Division advised the only option was a lengthy appeal.

97. In an effort to avoid a lengthy appeal, on May 13, 2021, a second FOIA request was submitted to specifically request production of the referenced substantive documents (RFP and response to RFP), the Contract Exhibits and all communication between USDA and WAPA regarding the FOIA request. On the deadline of the second FOIA request, the case worker, Mr. President, sent correspondence that a diligent search was being performed to search for the contract exhibits and there was no expected date of locating these records, contrary to the USDA’s own rules and regulations.¹⁷
98. Despite the fact that urgency was emphasized, Mr. President advised without explanation that the request had then been placed at the end of the line.
99. The USDA RD, RUS Division did eventually provide additional documents, but did not include any of the contract exhibits containing the necessary

¹⁷See, 5 U.S.C. § 552(a)(6)(B)(i).

substantive terms, including identification of the products and services that were paid for under the contract. When pressed, the USDA RUS Division agent explained that this material was uploaded to a website, but the USDA RUS Division had never downloaded the exhibits and they no longer had access to them. He was asked how the USDA RUS Division could extend a \$13 million loan and not know what was actually being purchased. No response was received.

Concealment of the AMI System Non-Functionality

100. Niel Vanterpool, WAPA's Director of Transmission and Distribution, reported that beginning in April and May 2015, WAPA would be deploying the new Tantalus meters in St. John and St. Croix. *Id.* at fn. 5. Vanterpool assured WAPA customers:

"As we develop the system, there will be a time when our customers can log on to a website and actually track their consumption, hour by hour. We are that confident that once completed, our ratepayers will have every confidence that they are receiving the electrical power they are paying for," Vanterpool said in response to a board member's question.

101. According to Jean Greaux, WAPA's former Public Communications Officer, the AMI Smart meters were failing in the thousands and the communication system did not work in Year One (2015) and WAPA was estimating a majority of the bills.

102. Rather than admit its mistakes and fix them, WAPA billed and continued to bill its customers based on...what – no one (but Defendants) really knows.

103. Again, Defendant Tantalus falsely represented and warranted to WAPA that the life of the “smart grid” system was 15 years, which is false.
104. Only after immense pressure, at a February 23, 2021 Legislative Hearing with the 34th Legislature, WAPA admitted that the Tantalus/Itron AMI “smart grid” system was not functioning properly. After its February 23, 2021 revelation, WAPA began advertising for meter readers. Despite hiring meter readers, WAPA has continued to mail bogus bills to its customers and threaten to terminate their utilities if the bills are not paid.
105. Again, only in response to intense pressure, on or about November 15, 2021, WAPA admitted that at least 12,000 of its customers were receiving “estimated” bills.¹⁸ Upon information and belief, WAPA officials are still not telling the truth and this “admission” is actually a gross understatement. Again, WAPA does not identify a bill as “estimated” and after three months, falsely changes the code to reflect alleged actual usage. The data is rigged.
106. On November 29, 2021, the US Virgin Islands Inspector General distributed a report reflecting WAPA officials’ concealment of their mismanagement and

¹⁸ The Virgin Islands Daily News, http://www.virginislandsdailynews.com/news/wapa-estimating-more-and-more-bills-as-it-has-trouble-with-meters/article_afab1dba-24b8-51be-ac40-e1f81e99c476.html (last visited 11/30/2021); See also, The VI Consortium, <https://viconsortium.com/vi-wapa/virgin-islands-wapa-automated-meter-system-not-communicating-with-over-12000-customer-meters-leading-to-high-level-of-estimated-billing> (last visited 11/30/2021).

malfeasance, under the director of Hugo Hodge, of millions of dollars related to unauthorized, unapproved, and highly suspicious contracts.¹⁹

107. WAPA, with Tantalus and Itron's tacit approval and participation, also concealed that the Tantalus/Itron AMI "smart grid" system has never had the functionality to reliably report electrical consumption data to and from consumers to WAPA.

108. Again, with Tantalus and Itron's tacit approval and participation, WAPA has concealed that it has been unable to reliably record its customers' readings using the AMI "smart grid" system.²⁰

Plaintiff/Qui Tam Relators engaged in independent investigations.

KH tested for smart meter functionality.

109. After receiving erratic bills from WAPA, KH obtained daily usage reports from WAPA. The clerk did not want to provide these reports to him, but Mr. Harrigan pushed. The WAPA daily usage reports are and were unreliable as

¹⁹ Ernice Gilbert, VI Consortium, \$92 Million in Unapproved Change Orders; \$113 Million in Cost Overruns; Incompetent Board: Inspector General's WAPA Audit Exposes Propane Project Fiasco, <https://viconsortium.com/vi-wapa/virgin-islands-92-million-in-unapproved-change-orders-113-million-in-cost-overruns-incompetent-board-inspector-generals-wapa-audit-exposes-propane-project-fiasco> (last visited 11/30/2021).

²⁰ <https://www.utwente.nl/en/news/2017/3/313543/electronic-energy-meters-false-readings-almost-six-times-higher-than-actual-energy-consumption#study>; <https://research.utwente.nl/en/publications/runaway-energy-meters-due-to-conducted-electromagnetic-interferen>; https://www.theregister.com/2017/03/06/smart_meters_prove_dim/

The professors' study (conducted European watt-hour meters) found that when some smart meters measured energy usage under AC waveform (LED; dimmers, etc.) that were extremely non-sinusoidal, the reported energy usage had very large measurement errors, up to 500%.

some days reflect high usage and other days reflect no usage at all. Harrigan knew that this is false because his family has been home and using power.

110. As a test, Harrigan converted to whole-house generator power for a number of weeks. He turned on his whole house generator on or about September 7, 2021; he reconnected to WAPA on September 22, 2021. His bill for this time period was more than it was when he was connected to WAPA full-time.
111. Harrigan complained to WAPA, to no avail. WAPA customer service directed only if he did not pay the bill his power would be cut off. WAPA personnel never disclosed any rules, policies, procedures or avenues of relief. Harrigan and the people of the Virgin Islands deserve an explanation.
112. Harrigan also complained to the Virgin Islands Senators.

RV closed his house for 6 weeks.

113. RV and his wife traveled to the United States to settle their children into college. They left on June 7, 2021, and returned on July 20, 2021.
114. While they were in the United States, no one had access to their residence and everything was turned off except the Whirlpool refrigerator, Model No. WRF535SWBM00. This Energy Star-certified refrigerator uses only an average of 616 kWh a year.
115. When the Victorines returned home, he had received two WAPA bills in the mail. WAPA's alleged kilowatt usage does not add up. On the July 12, 2021 bill, WAPA claimed the service date was from June 4, 2021 through July 6, 2021 and that the Victorines used a total of 602 kilowatts for the service

period and an average of 18.81 kilowatts per day. In the second bill dated August 10, 2021, WAPA represented that the "service period" began July 6, 2021 through August 2, 2021. On that invoice, WAPA claimed that Victorine used 1,260 kilowatts. WAPA claimed that RV used an average of 46.56 kWh per day.

116. In comparison with the above two invoices, WAPA sent RV an invoice dated May 14, 2021, when RV and his wife were home during the "service period" from April 9, 2021 through May 6, 2021. WAPA represented that RV used 654 kWh during this service period with an average daily use of 25 kWh per day.
117. When they left for the states, Victorine also turned the water off at the street. Yet, he received from WAPA a water bill for sixty dollars (\$60).
118. Victorine vociferously complained to WAPA and he received the same treatment as KH.

Gordon Ackley Took Pictures of the Smart Meter.

119. Gordon Ackley has a residential WAPA account. He experienced the same and/or similar experience with WAPA so he began taking pictures of his alleged usage on the AMI "smart" meter.
120. Before Hurricane Irma and Hurricane Maria, Ackley never used more than 2,000 kilowatt hours in a month. After the hurricanes, WAPA billed an extraordinary increase. Every month, Ackley began taking pictures of the usage on his meter. WAPA's invoices reflected two to four times the usage

on the meter and two to four times the amount Ackley had ever used prior to the Hurricanes. Ackley paid the bills in 2018 and 2019. In 2020, WAPA finally read the meter, and rolled the usage back 18,000 kilowatt hours between June and July 2020. Specifically, on June 29, 2020, WAPA showed 85,493 kWh. On July 23, 2020, WAPA's invoice reflected 67,234. WAPA rolled back the usage, but not the dollars. See, **Exhibit 1(a)-(d)** (WAPA invoices, photos and letters).

121. WAPA overbilled Ackley \$8553 and refuses to remove this charge from his bill. WAPA terminated his service and he drove to the office and explained the overbilling. WAPA restored his power; however, WAPA has sent two disconnection notices in the last six months.
122. Due to the overbilling, terminations and continued threats of termination, Ackley was forced to install a 32-kilowatt solar system with battery backup.

PSC Commissioner made numerous inquiries.

123. The more Clendenin pushed about the non-functionality of the smart meters, the more push back he experienced.
124. Every year, since 2002, Johann Clendenin spends a portion of June, July, August and until mid-September, with his family in the continental United States. He began to keep a close check on his WAPA invoices.
125. During those months he was off-islands, his WAPA invoices should have reflected a lower usage because when his St. Croix home was unoccupied. The only appliance running in the household is an Energy Saver side-by-side

Whirlpool refrigerator and an internet modem. The refrigerator is not opened during this time period. WAPA sent bills that were not identified as “estimates” and with no real reduction in alleged consumption.

126. From 2014 through 2019, Clendenin served on the PSC as a Commissioner and Chairman for two terms. He was beset with Virgin Islanders complaining about their bills. Some residents showed him that they had documented their meter readings establishing WAPA’s overbilling and their lengthy, but unsuccessful communication(s) with the WAPA billing office.
127. From 2016, Clendenin knew the system was not working for him personally and for others. As the PSC Commissioner, he could not obtain a straight answer or obtain relief for overbilling, on his personal behalf or for others.
128. After Hurricane Irma and Hurricane Maria, WAPA executives wanted to again contract with Defendants Tantalus and Itron. However, there was little or no oversight of WAPA executives due to an emergency statutory exception.
129. Clendenin vociferously objected and asked rhetorically why WAPA would even consider using the same contractors who failed to deliver the first time.
130. Again, Clendenin questioned WAPA’s proposal to continue doing business with Defendant Itron and Defendant Tantalus given the non-functionality of the system. This is one of the factors that led to his termination based on blatant pretext. See, **Exhibit 2**.

Leonard and Catherine Stephen are frugal with power usage.

131. Leonard Stephen is deaf; his wife, Catherine, handles the finances. They are extremely frugal with power usage. Leonard and Catherine installed a solar panel system with battery backup for reliability and security. After the solar system was installed, their WAPA bills doubled. They have an air conditioner, but Catherine is too afraid to use it. During the Christmas season, Catherine conserved to the extent she would not turn on their Christmas lights. She didn't even cook Christmas dinner; WAPA sent her a bill for \$309.

132. No matter how Catherine and Leonard conserve, they continue to receive WAPA bills not based on actual usage.

Clifford Joseph is off-grid and continues to receive WAPA bills.

133. Clifford Joseph was convinced his power bills did not reflect actual usage; consequently, he also installed solar and went off grid as of November 2024. WAPA continues to send him monthly invoices for over \$300. Joseph complained and WAPA promised to read his meter. Although a meter reader showed up, he said he was there to read meters on residences on either side of Joseph, but not him. His meter has not been read as of yet.

WAPA's unlawful billing practices hit seniors hard.²¹

134. Jean Persad is an 82-year-old widow who has lived with her family in St. Thomas since 1971. After the smart meter system was installed, and after her two apartments became unoccupied, Mrs. Persad began receiving bills from WAPA reflecting usage that varied wildly.²² With the exception of a refrigerator, nothing has been running in these two apartments. See, **Exhibit 3(a)** (composite usage for Apartment 4); **Exhibit 3(b)** (composite usage for Apartment 5). WAPA did not identify any of these bills as an "estimated" bill.

135. Mrs. Persad is on a fixed income and her son, Bhagwandeem Persad, paid these bills, but not without unsuccessfully complaining to WAPA.

136. WAPA personnel never mentioned that he could seek assistance from the PSC. It was Clendenin who told him to see if the PSC would help him.

²¹ There is no senior citizen center in St. Thomas. Prior to Hurricane Irma and Hurricane Maria, you would often find many senior citizens at the Turnbull Library in Tutu. They sat and read magazines, books and socialized. One other important reason they were there is to cool-out. They could not afford air conditioning at home. Since the hurricanes, the government took over the library for offices. There is no longer a respite in St. Thomas.

²² Persad has two apartments in the same building. Her August 2023 bill was 1,745.72 for Apt. No. 4. On September 12, 2023, on her behalf, Persad's son traveled to WAPA offices and spoke to Ms. Angie. He explained that her apartment had been unoccupied for more than two years; the bill was obviously inaccurate. Ms. Angie went to the back room. Ms. Angie returned and said Apt. No. 4 did not have any data; she said the second meter was not communicating with WAPA at all. He requested a work order and was told the issue would be resolved in one week. No one came to investigate. Again, later he again asked for someone to investigate. I again requested someone come out to investigate. On October 06, 2023, he filed a complaint with the PSC spoke to Ms. Davis who is the Utility Service Assistant. Davis said she would look into it. The September 26 bill dropped to \$523.40 for a vacant apartment with no change in consumption. The October 24, 2023 bill came in at 129.58. The November 28, 2023 bill was \$1,411.44.

137. Persad's son filled out a complaint form and took it to the PSC and woman, Ms. Davis, who is assigned to WAPA consumer complaints received it. Davis did not explain or provide Persad's son with any ratepayer rights, rules and/or regulations. Apparently, Davis contacts WAPA's customers service personnel and attempts to negotiate. Despite bills over \$1,000 and up to \$1,400 for one small apartment for last three years, Davis was unable to negotiate any refunds. In November 2023, Persad was billed \$1,411.44 for Apartment 4. Persad's son was unable to obtain any refunds for the overbilling; Persad's family paid these bills.

Back billing is unlawful and unconscionable.

138. WAPA cut the power of one 94-year-old woman who was born in St. Thomas and lived here her entire life until she recently passed away. Her monthly WAPA bills over the previous year ranged from \$50.44 to \$102 until November 23, 2020, when WAPA sent her a bill for \$502. She and her family members pointed out to WAPA "Customer Service" that the extraordinary increase made no sense. WAPA's "Customer Service" told her to pay the bill or her service would be terminated. If she had not paid her WAPA bill, WAPA would have disconnected her electricity before the Christmas holidays.

139. The following month, WAPA mailed her a December bill for \$339.84.

140. WAPA is prohibited "from back billing customers for additional consumption of water, or power except for back billing not exceeding the one billing cycle

immediately preceding the discovery by such utility of the error, and not to exceed one month.” 30 V.I.C. § 127(a)(2).

141. When her family contacted WAPA, as a pattern and practice, WAPA’s “Customer Service” falsely claimed that her meter had been read every month and that the increase in her bill was due to additional usage. Again, WAPA failed to provide any reasonable explanation or procedure to contest these extraordinary bills.
142. On or about June 13, 2021, in the middle of a heat wave, WAPA disconnected this 94-year-old woman’s electricity over a disputed \$58 balance.

Commercial Class Action Plaintiffs

143. Plaintiff Gasworks, Inc. owns and operates a gas station, convenience store and a restaurant at one location in St. Thomas. Due to the high WAPA bills, Gasworks began installing solar panels in 2013. Gasworks bills dropped drastically to around \$1,000 monthly. After a smart meter was installed, Gasworks bills began climbing by approximately \$1,000 a month until it leveled out at \$10,000 a month. Gasworks has approximately 500 solar panels installed.
144. Gasworks has complained to WAPA again and again demanding they check the meter reading to no avail.
145. Fruit Bowl is a grocery store that owns and operates a grocery store in St. Thomas. Since the smart meter system was installed, WAPA has emailed

Plaintiff Fruit Bowl, Inc. arbitrary bills not based on actual usage. For example, WAPA sent invoices for the exact same amount down to the of \$12,730.75 the months of September, October, November of 2023 and January 2024.

146. Fruit Bowl had no choice but to pay the bills or risk termination.

WAPA selective termination practices.

147. WAPA has made it almost impossible for its customers to prove the overbilling by using irregular and arbitrary billing cycles, resulting in erratic due dates, which is also unlawful. 30 V.I.C. § 127(b).²³ The ever-changing due dates are especially challenging for senior citizens and have resulted in finance charges and threats of termination. On December 13, 2023, WAPA threatened to terminate Johann Clendenin's utilities for a \$3.34 balance representing an arbitrary late charge.

148. Again, WAPA also changes the estimated bills in the system to falsely reflect "C" for purported "actual usage".

149. Unlike the elderly woman, who was disconnected for a \$58 balance, Gordon Ackley who was disconnected and threatened to disconnect for refusal to pay an admitted \$8553 bogus overcharge, and Johann Clendenin who been threatened with disconnection for a \$3.58 balance, WAPA provided Isle 95

²³ Section 127(b) provides: For purposes of this chapter, "billing cycle" means a period of time between billing not exceeding 30 calendar days, or in the case back billing on, not exceeding 35 calendar days.

radio station's owner, Jonathan Cohen, with special treatment. Cohen racked up \$195,000 in past due WAPA bills without disconnection.²⁴ Cohen is not the only one receiving such preferential treatment, reserved for the politically-connected.

Cyber Attack Vulnerability.

150. A "smart grid" system is supposed to integrate the traditional electrical power grid with Information and Communication Technology (ICT).²⁵
151. Security remains one of the most important issues in "smart grid" systems given the dangers that befall residents and businesses if the grid falls under attack.
152. Without security measures, the introduction of ICT into a power grid exposes the grid to a number of vulnerabilities. These vulnerabilities can be exploited by attackers with different motives and expertise and could cause different levels of damage to the network. Attackers could be script kiddies, elite hackers, terrorists, disgruntled employees, competitors, or customers.
153. The power industry has recognized for years that an investment in smart technology exposes the power grid to catastrophic consequences if not

²⁴ <https://vifreepress.com/2016/01/board-votes/> (Cohen overdue bills) (last visited 11/30/2021).

²⁵ A smart grid system is coupled with the relatively short-lived IT systems. It is inevitable that outdated equipment is still in service. This equipment might act as weak security points and might very well be incompatible with the current power system devices.

property installed and maintained with reliable infrastructure in place beforehand.

154. At a minimum, a “smart grid” system should include a set of authentication, encryption and key management protocols to be used by utility industries, vendor communities, and other “smart grid” stakeholders for deploying a secure “smart grid” system.
155. If a “smart grid” system is installed without adequate cyber security, the impact of a threat that will cripple businesses, cause a wide-scale blackout²⁶, and result in millions or billions of dollars in economic damage.
156. Because it has been impossible heretofore to obtain the Tantalus/Itron Contract exhibits and referenced necessary documents, no complete assessment can be conducted of the hardware, which may also pose a huge security risk. For example, the US Department of Defense recently seized Chinese transformers at port due to a discovery of backdoor hardware chips. There are hardware chips in the smart meters, too.

²⁶ The US Virgin Islands’ residents experience wide-scale black-outs without adequate explanation. For example, only, on Sunday, June 13, 2021, the islands of St. Thomas and St. John experienced a black out for five (5) hours. On June 17, 2021, VI residents reported blackouts all day and at 11:35 p.m. the Virgin Islands experienced another widespread blackout. Still no power the following morning WAPA announced that there was no timeline for restoration of service. WAPA did not restore power until after 11 a.m.

COUNT I
(DUE PROCESS RIGHT TO POWER & LIGHT)
(WAPA & ANDREW SMITH)

157. Plaintiffs Gordon Ackley, Johann Clendenin, Jean Persad, Leonard Stephen, Catherine Stephen, Clifford Joseph, Annette Mauvais, Dunel Mauvais, Gasworks, Inc., and Fruit Bowl, Inc. reallege all the preceding paragraphs as if the same are fully set forth herein.
158. In part, the US Constitution says that no person may be deprived of life, liberty, or property without due process of law.²⁷ Substantive due process looks at whom the law will impact and what impact the law will have. Procedural due process looks at how the law is implemented and enforced.
159. There are two requirements for a Section 1983 cause of action for violation of the Due Process Clause. First, there must be a recognized "liberty or property" interest. Second, there must be an intentional or reckless deprivation of that interest under color of state law.
160. Recognizing the fact that utility service has become a necessity for safety and comfort in modern-day life, the overwhelming majority of courts have

²⁷ 14 USC § 1561. Article 1, Second sentence of the 14th Amendment applies to Virgin Islands: No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

found that a continuation of utility service qualifies as a property interest worthy of protection.

161. It is well settled that the operations of government-owned and operated public utility concerns, such as gas, electric and water companies, constitute state action under the Civil Rights Act.
162. Where any person is deprived of a property interest, due process requires notice and a meaningful opportunity to be heard.
163. The phrase “any person” has been interpreted to include natural persons, such as individuals, and legal persons such, as business entities; thus, corporations and companies are entitled to Fourteenth Amendment due process protections as well.
164. As of May 2021, the average electricity rate per kWh in the United States is 13.29 cents. The highest in the US is 33.36 cents per kWh in Hawaii.²⁸ As of June 2021, Virgin Islands residents are paying three times the national average. (\$.43 per kWh for residents; \$.53 for commercial kWh).
165. The Virgin Islands residents are hostage to an unreliable power system, WAPA’s dysfunctional and dishonest billing system and WAPA’s often-criticized customer service division whose representatives have been

²⁸ <https://www.saveonenergy.com/electricity-rates/> (last visited June 15, 2021).

described in many corners of the community as unprofessional, belligerent and rude.²⁹

166. The VI Legislature amended Title 30, Section 23 and added section (c) to provide WAPA's customers with due process.³⁰ This law has never been implemented. Further, a ratepayer is not required to petition the Public Services Commission for relief as the statutory language is optional. To this date, the PSC has never adopted and implemented a procedure for disputing a bill with the exception of *ad hoc* negotiation.
167. WAPA's termination procedures violate due process through inadequate notice and a lack of formalized procedures to resolve customer complaints. Additionally, the PSC has never provided the ratepayers with notice and implemented formalized procedures to resolve customer complaints.

29 <https://viconsortium.com/vi-wapa/virgin-islands-wapa-leadership-shakeup-takes-hold-as-rhymer-resigns-and-hedrington-is-set-to-leave-kupfer-whose-planned-exit-was-march-10-has-gone-on-leave-through-his-last-day>;

30 "(c) In addition to the powers granted in subsection (a), the Commission shall have the power to investigate and resolve all customer disputes over billing and complaint s about service, including complaints filed pursuant to the Virgin Islands Ratepayers' Bill of Rights established in section 1a of this title, filed against any public utility, including the Virgin Islands Water and Power Authority. Rate payers must first attempt to resolve the dispute directly with the public utility. A rate payer **may** present a dispute to the Public Services Commission for resolution only after the public utility and the ratepayer have failed to resolve the dispute in a manner satisfactory to the ratepayer. (emphasis added).

168. On May 5, 2020, the VI Legislature passed Act 8297, codified at 30 V.I.C. § 127, prohibiting WAPA from back-billing its customers more than one month due to faulty or defective meters. The statute places the burden on WAPA to demonstrate the meters are actually read. *Id.* at subsection (b). Neither WAPA nor the PSC has enforced this law. In fact, WAPA intentionally skews the readings by manually changing an estimated bill by enter code "C" to reflect the bill is based on actual usage, thereby read, when the meter has not been read.
169. After the February 2021 Legislative hearing, WAPA advertised for meter readers without disclosing why meter readers are needed after spending \$16+ million on the Tantalus/Itron AMI "smart grid" system.
170. On or about November 15, 2021, WAPA officials admitted that approximately 12,000 meters do not function. Upon information and belief, this figure is highly understated.
171. Procedural due process requires the government to implement and enforce laws by following fair procedures that apply equally to everyone.
172. WAPA applies arbitrary, capricious, and informal "rules" to bill collection and electricity termination. Similar to its bills, WAPA makes up the rules up along the way and allows the politically connected to stack up huge WAPA bills without disconnection.

173. Thus, the Tantalus/Itron AMI “smart grid” system’s wildly inaccurate billing and WAPA’s arbitrary collection and termination policies qualify as violations of both Constitutional substantive and procedural due process.

174. WAPA and its employees have recklessly deprived its customers of these interests under color of law.

175. WAPA has collected unlawful debts resulting from utility bills not based on actual usage, and continues to collect these unlawful debts, from its customers without recourse as alleged above, constituting a deprivation of their property interests without due process of law and disconnects service if the bills are not paid.

WHEREFORE, the Plaintiffs respectfully request this Court exercise jurisdiction over this cause and over the parties to this action,

WHEREFORE, the Plaintiffs request economic damages including compensatory and consequential damages,

WHEREFORE, the individual Plaintiffs request damages for pain and suffering and emotional distress,

WHEREFORE, the Plaintiffs also request affirmative injunctive relief, including but not limited to entering an order instructing Andrew Smith and any successors that WAPA must physically read the meters on a monthly basis; that WAPA alert its customers and provide the exact date when their particular meter will be read each month; and, that WAPA’s customers may elect to use Analog meters, if they so choose, at no extra monthly cost. The Plaintiffs/Qui Tam Relators request any

other equitable relief as just and costs pursuant to 42 U.S.C. §1988 and all other applicable laws.

WHEREFORE, the Plaintiffs also seek additional affirmative injunctive relief including an order that none of the HUD grant monies or any other federal funds be used to pour millions into the Tantalus/Itron "smart grid" system or any other "smart grid" system in the U.S. Virgin Islands. The Plaintiffs respectfully request that this issue should be subject to full disclosure via a public hearing regarding the risk/benefit analysis and based on an economic feasibility study and then only after the public/community/ratepayers have a say.

WHEREFORE, WAPA has failed to implement internal control structures and procedures to avoid waste, theft, conflicts of interest, etc., the Plaintiffs also seek affirmative injunctive relief including an order instructing Defendant Andrew Smith to "open the books" of WAPA and to post all expenditures and contracts on a website in "real time" for the Virgin Islands residents and ratepayers to review. WAPA is the Achilles Heel of the US Virgin Islands; the WAPA Executives have operated without accountability for far too long.

COUNT II
(FALSE CLAIMS ACT)
(DEFENDANTS WAPA, TANTALUS, ITRON & JOHN DOES 1-10)

176. Plaintiffs/Qui Tam Relators RV, KH, Gordon Ackley, and Johann Clendenin reallege all the preceding paragraphs as if the same are fully set forth herein.

177. The Companies that installed the AMI “smart grid” system do so at the expense of federal taxpayers and ratepayers. There are significant federal government monies involved through government loans and government grants.
178. The claimed expected benefits of deploying the Tantalus/Itron AMI “smart grid” system included providing WAPA’s customers the ability to monitor their actual energy consumption to save money, and to reduce WAPA’s labor costs by terminating meter readers.
179. The Tantalus/Itron AMI “smart grid” system “roll-out” is yet another large-scale public infrastructure project delivered well over budget which failed and continues to fail to deliver the expected benefits, and Defendants knew it when they sold it to the WAPA.³¹
180. Defendants designed, manufactured, and sold the Tantalus/Itron AMI “smart grid” system and/or a component thereof, which was installed into the US Virgin Islands electrical grid, knowing that the system was not functional and/or compatible with the Virgin Islands’ infrastructure. Upon information and belief, some of the Tantalus/Itron “smart grid” system components were already outdated.
181. Defendant Tantalus, Defendant Itron, and Defendant John Does sold an integrated product; they installed or caused to be installed the

³¹ <http://www.nickhunn.com/gb-smart-metering-no-longer-financially-viable/>

Tantalus/Itron "smart grid" system into over 50,000 Virgin Islands' homes and businesses.

182. Defendants Tantalus and Itron, and WAPA executives made false statements in marketing the alleged AMI "smart grid" system to Virgin Islands' residents and businesses, when they claimed:

- a) The Tantalus/Itron AMI "smart grid" system would save consumers money and benefit consumers;
- b) That WAPA's Customers could monitor their own energy usage in real-time, allowing customers to exercise more control over their usage and feel confident that their bills were accurate;
- c) The new Tantalus/Itron AMI "smart grid" system would be used to create bills that would accurately reflect actual consumption;
- d) Defendants Tantalus and Itron guaranteed 100% coverage of the three-island service territory³²; and,
- e) That the life of the Tantalus/Itron AMI "smart grid" system was fifteen (15) years.

183. The Defendants made the above positive statements without stating the risks of installing the Tantalus/Itron AMI "smart grid" system in order to avoid public critique; these statements also justified WAPA's application for a \$13 million federal loan, when Defendant Tantalus and Defendant Itron knew or had reason to know the above statements were false. Tantalus and Itron also knew the project would never be financially viable and would fail before the \$13 million federal loan was satisfied in twenty (20) years.

³² BN 138 FOIA (Tantalus/Itron Revised Propagation Study)

184. Although 1100 pages of documents have been obtained via FOIA, the exhibits to the Tantalus contract, which contain the bulk of the substantive terms, were not produced.
185. These Relators have repeatedly complained about WAPA's overbilling and the "smart meter" system both to their Virgin Islands Senators and the federal authorities long before the December 1, 2021 Complaint was filed – and still do. Consequently, the Legislature demanded documentation that WAPA has yet to produce despite repeated requests.
186. It was impossible to obtain specifics from the federal government via FOIA since the field agents did not download the substantive materials because they claimed they were too voluminous. The USDA RUS Division agents finally and reluctantly explained that they allegedly no longer have access to these website materials (i.e., contract exhibits and incorporated documents).
187. Defendant Tantalus, Itron, WAPA and its executives, and John Does 1-10 have violated the United States FALSE CLAIMS ACT. Defendant WAPA has also violated the False Claims Act as it concealed the non-functionality of the system from the United States Department of Agriculture so that its co-Defendants could collect full payment and then some under multiple change orders.
188. Defendants WAPA, Tantalus, Itron and JOHN DOES were obligated to conduct a final Performance Testing prior to release of the performance bond. This includes someone from WAPA actually signing off that the

Tantalus/Itron "Smart Meter" system is/was installed properly, communicating and functioning as contractually promised before final payment and the release of the performance bond.

189. WAPA's executives, including but not limited to Gregory Rhymer, Niel Vanterpool, Hugo Hodge, and Clinton Hedrington, were compromised so that any standard performance testing and validation was also compromised.
190. Tantalus, Itron and John Does were fully paid according to the agreement and then some pursuant to numerous change orders.
191. In addition to WAPA's ratepayers being subjected to billing for energy not based on actual consumption, WAPA still owes the federal government millions on the USDA RUS Division loan for a system that is not functional and that its co-Defendants have falsely represented had a 15-year life. WAPA is teetering on the brink of financial collapse due to mismanagement, negligence and potential wrong-doing. It is highly unlikely that this \$11 million debt can be repaid.
192. Defendant Tantalus also hired WAPA's Executive Director, Hugo Hodge, as its Caribbean VP within six months of Hodge leaving WAPA under a cloud.
193. Defendant Tantalus and Defendant Itron provided invoices to WAPA, which then provided them to the USDA RUS Division to obtain approval for the release of federal funds. These invoices were factually false because there are monies claimed due and owing for the alleged Tantalus/Itron AMI "smart grid" system for services not performed and

faulty equipment. The invoices submitted to the USDA RUS Division were also legally false for failing to comply with a precondition to payment for which compliance was expressly and/or implicitly certified. The Tantalus/Itron AMI "smart grid" system was not functional, not compatible, and not economically feasible for the US Virgin Islands.

194. The Relators seek, through this action, to recover statutory damages and civil penalties arising from the false or fraudulent records, statements and/or claims that Defendant Tantalus, Defendant Itron and Defendant John Does knowingly made or caused to be made in connection with their scheme to sell a non-functional AMI "smart grid" system, resulting in Virgin Islands residents being scammed out of hundreds of thousands, if not millions, of dollars -- and funded by federal monies. The costs of Defendants' chicanery should not be borne on the backs of the Virgin Islands ratepayers. Senior citizens should not have to choose between electricity and other necessities, including but not limited to food and medicine.

195. Defendant Tantalus, Defendant Itron and Defendant John Does could not have perpetrated this fraud without WAPA's assistance. Defendant WAPA is also accountable.

WHEREFORE, the Plaintiffs/Qui Tam Relators respectfully request this Court exercise jurisdiction over this cause and over the parties to this action,

WHEREFORE, the Plaintiffs/Qui Tam Relators also request damages pursuant to 31 U.S.C.S. § 3729(a) including trebled damages which the Government

sustained because of the Defendant Tantalus, Defendant Itron and Defendant John Does' acts.

WHEREFORE, the Plaintiffs/Qui Tam Relators also request costs including reasonable attorney fees pursuant to 31 U.S.C.S. § 3730(d)(2).

COUNT III
(CLASS ACTION)
(V.I. Consumer Fraud & Deceptive Business Practices Act)
(Defendant Tantalus, Defendant Itron, and Defendant John Does)

196. Class Action Plaintiffs Gordon Ackley, Johann Clendenin, Jean Persad, Clifford Joseph, Annette Mauvais, Dunel Mauvais, Leonard Stephen, and Catherine Stephen, reallege all the preceding paragraphs as if the same are fully set forth herein.

197. Class Action Plaintiffs bring this class action pursuant to Rule 23 of the Federal Rules of Civil Procedure, individually and on behalf of all members of the Residential Ratepayer Class, Senior Citizen Residential Ratepayer Subclass, and Commercial Ratepayer Class, as defined below (individually a "Proposed Class" and collectively the "Proposed Classes"):

Residential Ratepayer Class

198. All persons residing in the U.S. Virgin Islands with a Tantalus/Itron AMI Smart Meter who, within the relevant statute of limitations period, received power bills from WAPA that was not based on actual usage;

Senior Citizen Residential Ratepayer Subclass

199. All senior citizens residing in the U.S. Virgin Islands with an AMI Smart Meter who, within the relevant statute of limitations period, received bills from WAPA that was not based on actual usage;

Commercial Ratepayer Class

200. All commercial business owners and operators in the U.S. Virgin Islands with an AMI Smart Meter who, within the relevant statute of limitations period, received bill(s) from WAPA that was not based on actual usage.

Exclusion from the Classes

201. Excluded from the Proposed Classes are the following individuals and/or entities: Each Defendant and its respective parents, subsidiaries, affiliates, officers and directors, and any entity in which Defendant has a controlling interest; all individuals who make a timely election to be excluded from this proceeding using the correct protocol for opting out, all defense attorneys, their employees and immediate family members; and, all judges assigned to hear any aspect of this litigation, as well as their immediate family members.

202. Class Action Plaintiffs reserve the right to modify or amend the definition of the proposed Classes after having had an opportunity to conduct discovery.

203. Plaintiffs Leonard Stephen, Catherine Stephen, and Clifford Joseph are members of the Residential Ratepayer Class.

204. Class Action Plaintiffs Gordon Ackley, Johann Clendenin, and Jean Persad are members of the Residential Ratepayer Class and Senior Citizen Residential Ratepayer Subclass;

205. Plaintiffs The Fruit Bowl, Inc., and Gasworks, Inc. are members of the Commercial Ratepayer Class;

a) Numerosity: The proposed Classes are so numerous that joinder of all members would be impractical. Defendant Tantalus, Defendant Itron and Defendant John Does installed the Tantalus/Itron Smart Meter system into over 50,000 homes and businesses. Accordingly, the Proposed Class members are so numerous that their individual joinder herein is impractical. While the precise number of Proposed Class members and their identities are unknown to Plaintiffs at this time, these Proposed Class members are easily identifiable and ascertainable through WAPA's billing records.

b) Common Questions Predominate: There are questions of law and fact common to the Proposed Classes that will drive the resolution of this action and will predominate over questions affecting only individual Proposed Class members. These questions include, but are not limited to, the following:

- Whether Defendant Tantalus, Defendant Itron and/or Defendant John Does misrepresented material facts and/or failed to disclose or concealed material facts in connection with the marketing, sale, installation, and performance of the Tantalus/Itron "smart meter" system;
- Whether Defendant Tantalus, Defendant Itron and/or Defendant John Does engaged in unfair, unlawful and/or fraudulent business practices;
- Whether Defendants' tortious and unlawful conduct, as alleged herein, was intentional and knowing;
- Whether Plaintiffs and the Proposed Classes are entitled to damages and/or restitution, and in what amount; and,

- Whether Plaintiffs and the Proposed Classes are entitled to an award of their reasonable attorneys' fees, interest, and costs of suit.

206. Defendant Tantalus, Defendant Itron and Defendant John Does have engaged in a common course of conduct giving rise to violations of the legal rights sought to be enforced uniformly by Plaintiffs and the Proposed Class members. Similar or identical statutory and common law violations, business practices, and injuries are involved. The injuries sustained by members of the Proposed Classes flow, in each instance, from a common nucleus of operative facts, namely, those surrounding Defendants' deceptive conduct concerning the marketing, sale, installation and performance of the Tantalus/Itron "smart meter" system and/or components thereof. Each instance of harm suffered by Plaintiffs and the Proposed Class members has directly resulted from a single course of illegal conduct. Therefore, individual questions, if any, pale in comparison to the numerous common questions presented in this action.

207. **Superiority:** Because of the relatively small size of the individual Proposed Class members' claims, many, if not most, of the Proposed Class members could not afford to seek adequate legal redress on an individual basis. Furthermore, individualized litigation increases the delay and expense to all parties and multiplies the burden on the judicial system presented by the complex legal and factual issues involved in this case. Individualized litigation also presents a potential for inconsistent or contradictory judgments. A class action is thus superior to any alternative means of prosecution.

208. **Typicality:** Plaintiffs' claims are typical of those of the Proposed Class members, as all members of the Proposed Classes are similarly affected by Defendants' uniform tortious and unlawful conduct, as alleged herein.
209. **Adequacy:** Plaintiffs will fairly and adequately represent and protect the interests of the Proposed Classes as their interests do not conflict with the interests of the members of the Proposed Classes they seek to represent, and they have retained counsel competent and experienced in class action litigation. The interests of the members of the Proposed Classes will be fairly and adequately protected by Plaintiffs and their counsel.
210. This lawsuit is maintainable as a class action under Federal Rule of Civil Procedure 23 because Defendants acted, or failed to act, on grounds generally applicable to Plaintiffs and the Proposed Classes, supporting the imposition of uniform relief to ensure compatible standards of conduct toward the members of the Proposed Classes.
211. Class Action Plaintiffs Gordon Ackley, Johann Clendenin, and Jean Persad qualify as persons who have been injured by a deceptive trade practice pursuant to Section 331 of the Consumer Fraud & Deceptive Business Practices Act.
212. Class Action Plaintiff Gasworks, Inc. and Fruit Bowl, Inc. are businesses that been injured by a deceptive trade practice pursuant to Section 331 of the Consumer Fraud & Deceptive Business Practices Act.

213. Individual reliance is not required in a consumer class action under this Act.
12A V.I.C. § 331.

214. Claims under the Consumer Fraud & Deceptive Business Practices Act Fraud, 12A V.I.C. § 301 et. seq., may be asserted by third parties against contractors who make misrepresentations, despite the absence of privity, when the harm is foreseeable and damage proximately results. Thus, privity of contract is not required in the U.S. Virgin Islands.

215. Defendants Tantalus, Itron and John Does violated the standard of a deceptive business practice, which is an act which misrepresents, deceives, or unfairly influences a reasonable and objective consumer. 12A V.I.C. § 331.

216. Class Action Plaintiffs were damaged and their damages were proximately caused by Defendant Itron, Defendant Tantalus, and Defendant John Does.

WHEREFORE, the Class Action Plaintiffs respectfully request this Court exercise diversity jurisdiction over this cause and over the parties to this action,

WHEREFORE, the Class Action Plaintiffs respectfully request this Court enter an Order certifying the classes;

WHEREFORE, the Class Action Plaintiffs respectfully request this Court to enter an award of compensatory, consequential, punitive and equitable damages pursuant to 12A V.I.C. § 331;

WHEREFORE, in order to protect the rights of Virgin Islands consumers and businesses, if a jury makes a finding of compensatory and/or consequential damages, these damages shall be trebled; and,

WHEREFORE, the Class Action Plaintiffs respectfully request that this Court impose an additional civil penalty not to exceed \$10,000 for each violation pursuant upon each Defendant who has engaged in any method, act, or practice declared unlawful under this chapter and the violation was against a person 65 years of age or older; and,

WHEREFORE, the Class Action Plaintiffs also respectfully request this Court award costs and expenses, including their reasonable attorneys' fees under 12A V.I.C. § 332.

**COUNT IV
(FAILURE TO WARN OF CATASTROPHIC RISK)
(DEFENDANTS TANTALUS, ITRON & JOHN DOES 1-10)**

217. Plaintiffs Gordon Ackley and Johann Clendenin reallege all the preceding paragraphs as if the same are fully set forth herein.

218. With revenue growth predicted to soar in the "smart grid" industry as a result of a huge federal stimulus package, Defendant Tantalus sought capital investment. The leader was Redpoint Ventures, a major investor, with offices in Menlo Park and Los Angeles, California and Shanghai, China. Defendant Tantalus is recognized as a "market leader" in the "smart grid" industry.

219. Defendant Itron is described as a “global powerhouse” and also claims a huge market share of the industry; Itron is as close to the definition of a monopoly in aspects of the “smart grid” industry as it gets.³³
220. Defendant Tantalus, Defendant Itron and Defendant John Does 1-10 have engaged in the business of manufacturing, designing, selling and/or otherwise distributing a defective product (“smart grid” system) and/or a component or components thereof to WAPA.
221. The above Defendants’ actions have exposed the US Virgin Islands people and possibly the continental United States to catastrophic consequences due to the lack of electrical grid security.
222. These Defendants are in the best position to prevent harm from defects in an AMI “smart grid” system.
223. The corporate secrecy surrounding smart meters and the “smart grid” systems discourages relevant experts from probing for vulnerabilities, which makes the public less safe.
224. As Defendant Tantalus, Defendant Itron, and Defendant John Does were and are well aware, the US Virgin Islands is saddled with an aging infrastructure, overwhelming debt and are isolated from escape routes in a long-term (over two weeks) electrical power grid blackout.

³³ <https://www.fool.com/investing/2021/03/13/3-stocks-building-the-next-generation-energy-grid/>

225. As Virgin Islanders are well aware, the effects of a long-term power grid blackout would be catastrophic.
226. Even if Defendant Tantalus and Defendant Itron's representations about their system's functionality were true, which they were not, national security, since the US Virgin Islands jurisdiction is a United States border, is paramount to any technological billing convenience (no meter readers), which is the marketing ploy used by Defendant Tantalus and Defendant Itron when it sold this "smart grid" system with a shelf-life of 5-7 years to WAPA to the tune of \$16+ million (meter warranties were maximum three years). Meter readers are far more economical and, as here, accurate.
227. Both Defendant Tantalus and Defendant Itron participated in the selection and integration of the Defendant John Does' components and services into the design of the Tantalus/Itron AMI "smart grid" system.
228. The Defendants had a legal duty to make a product, the Tantalus/Itron AMI "smart grid" system, that was and is reasonably safe.
229. The Defendants knowingly sold a product that has created a dangerous condition for those living and operating businesses in the US Virgin Islands.
230. The Defendants did not and have not warned WAPA's customers of the extraordinary risk of cyber-attack and the resulting consequences that would affect VI residents and businesses – or the exponential increase of foreseeable criminal conduct.

231. The “smart grid” metering industry been debased to the point where it exalts the benefits to the supplier manufacturers without costs to the taxpayers and ratepayers.
232. The problem of unsecure devices and networks, such as those sold, designed, and manufactured by the “smart grid” Defendants, is precisely the kind of issue that strict products liability was designed to address.
233. Pre-event, before the “smart grid” integrated system is installed and before any cybersecurity threat has occurred, the private industry is clearly the responsible party for implementing the protective measures to ensure the security of the US Virgin Islands people.
234. The dangerous propensities of the Tantalus/Itron AMI “smart grid” system is not obvious to the regular US Virgin Islands consumer/ratepayer.
235. The catastrophic risk of harm is sufficiently great to justify the burden of providing a warning to the uninformed public of the risk of cyber-attack and its catastrophic effects so that they may take measures to protect themselves, their families and their businesses.
236. The Defendants owed Virgin Islands ratepayers a duty to warn.
237. Defendants did not provide clear, conspicuous warnings adequate to inform consumers about the cyber security dangers associated with the installation of the Tantalus/Itron AMI Smart Grid system through product literature or safety instructions. In fact, the Defendants provided no warnings at all.

238. This is not a fanciful threat. In November 2023, CISA issued an alert that Iranian hackers had breached presumably functional water and power authorities, including a water authority near Pittsburgh, Pennsylvania.³⁴ Pennsylvania leaders said in a letter to Attorney General Garland, “[a]ny attack on our nation’s critical infrastructure is unacceptable. . . [i]f a hack like this can happen here in western Pennsylvania, it can happen anywhere else in the United States.”³⁵
239. Border jurisdictions are prime territory for hacking and the Virgin Islands has a non-functional system.
240. Plaintiffs Gordon Ackley has been damaged as they have incurred costs for alternate emergency energy sources (solar) as appropriate safeguards for their families.
241. Further, Plaintiff Gordon Ackley has suffered the stress of worrying about the safety and security of their homes and loved ones as they have extensive experience with respect to power outages in the aftermath of hurricanes.

³⁴ CISA said while the equipment in question, "Unitronics Vision Series programmable logic controllers," is predominately used in water and wastewater systems, companies in energy, food and beverage manufacturing, and health care are also under threat.

"These compromised devices were publicly exposed to the internet with default passwords," CISA said.

³⁵ <https://www.seattletimes.com/business/congressmen-ask-doj-to-investigate-water-utility-hack-warning-it-could-happen-anywhere/>

With hurricanes, one knows when it is coming. Cyber-attacks are unpredictable.

Wherefore, Plaintiffs request economic damages/costs to cover replacement with installation of analog meters if they choose, consequential damages of installing emergency alternate energy, non-economic damages, and any other relief as deemed appropriate.

ALL PLAINTIFFS DEMAND A JURY TRIAL.

Date: January 27, 2024

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