

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

PHILIP J. BERG, ESQUIRE, <i>pro se</i> , on his own	:	
BEHALF and on BEHALF of the	:	
GOVERNMENT OF THE UNITED STATES	:	
OF AMERICA	:	Case No. 08-cv-1933
555 Andorra Glen Court, Suite 12	:	
Lafayette Hill, PA 19444,	:	
	:	
Relator,	:	
	:	
vs.	:	
	:	
BARACK HUSSEIN OBAMA, JR..	:	
	:	
Defendant.	:	

**PHILIP J. BERG, ESQUIRE, RELATOR'S**  
**RESPONSE to THE HONORABLE COURT'S ORDER of FEBRUARY 4, 2009**  
**and THE LETTER DATED FEBRUARY 12, 2009**  
**from THE U.S. DEPARTMENT OF JUSTICE**

Philip J. Berg, Esquire, Relator, on his own behalf and on behalf of the Government of the United States of America in this matter filed a Motion requesting this Honorable Court to Unseal this Case and Permit Him as Relator to Proceed with the Complaint herein Pursuant to the Federal False Claims Act. In support of his Motion, Mr. Berg files the within Response to The Honorable Richard W. Roberts Order to Show Cause dated February 4, 2009 and the Letter from Assistant United States Attorney Keith V. Morgan dated February 12, 2009 and states as follows:

**Procedural History**

1. On November 7, 2008, Philip J. Berg, Esquire, as Relator and as "*pro se*" [insisted by the Clerk at the United States District Court to insert], filed the Complaint herein on his own Behalf and on Behalf of the Government of the

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United States of America based upon a cause of action arising under the Federal False Claims Act found at 31 U.S.C. Sections 3729 through 3733.

2. Attached to the Complaint for Qui Tam, which was filed under seal, were disclosures of material evidence, **Exhibits A-D to the Complaint filed on November 7, 2008.**
  
3. On or about November 10, 2008 at approximately 1:40 p.m., Michael Jones, a process server with Same Day Process Serving, Inc., personally served upon the U.S. Attorney the Notice of Right to Consent to Trial before United States Magistrate Judge; Initial ECF Order; ECF Attorney Participant Registration Form; the Complaint; and the Exhibits. Lakesha Carroll, Docket Clerk and Authorized Agent for the U.S. Attorney accepted all of the documents. Ms. Carroll was also informed of the contents of the documents which she accepted service on behalf of the U.S. Attorney. See attached **EXHIBIT "1"**.
  
4. Also on November 10, 2008 at approximately 2:05 p.m., Michael Jones, a process server with Same Day Process Serving, Inc., personally served upon the U.S. Department of Justice the Notice of Right to Consent to Trial before United States Magistrate Judge; Initial ECF Order; ECF Attorney Participant Registration Form; the Complaint; and the Exhibits. Tony Duntzler as Authorized Agent for the U.S. Department of Justice accepted all of the documents. Mr. Duntzler was

also informed of the contents of the documents which he accepted service on behalf of the U.S. Attorney. See attached **EXHIBIT “2”**.

5. On or about February 2, 2009, Mr. Berg filed a Motion to Unseal the within action and requested he be permitted to prosecute the within action pursuant to the Federal False Claims Act.
6. On February 4, 2009, The Honorable Richard W. Roberts issued an Order To Show Cause giving the Government to February 17, 2009 to show cause in writing why the Government’s silence should not be deemed consent to allow the Relator to proceed with the action. See attached **EXHIBIT “3”**.
7. On or about February 13, 2009, Mr. Berg received a letter from Keith V. Morgan, Assistant United States Attorney with the U.S. Department of Justice. Mr. Morgan in his letter dated February 12, 2009, claimed the government had not been served with the Complaint and written disclosure statement as required by 31 U.S.C. §3730(b)(2). See Mr. Morgan’s letter attached as **EXHIBIT “4”**.
8. As stated above, the U.S. Department of Justice and the U.S. Attorney were served on November 10, 2008, see **EXHIBITS “1” and “2”**.
9. The purpose of the Federal False Claims Act is to encourage private individuals who are aware of fraud being perpetrated against the government to

bring such information forward. *Ragsdale v. Rubbermaid, Inc.*, 193 F.3d 1235, 1237 n.1 (11<sup>th</sup> Cir. 1999)

10. As noted by this Honorable Court, pursuant to 31 U.S.C. § 3730(b)(4) states in pertinent part:

**§ 3730. Civil actions for false claims**

(a) **Responsibilities of the Attorney General.** — The Attorney General diligently shall investigate a violation under section 3729. If the Attorney General finds that a person has violated or is violating section 3729, the Attorney General may bring a civil action under this section against the person.

(b) **Actions by Private Persons.** —

(4) Before the expiration of the 60-day period or any extensions obtained under paragraph (3), the Government shall—

(A) Proceed with the action, in which case the action shall be conducted by the Government; or

(B) Notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.

11. The Government has failed to come forward and prosecute this case and failed to request an extension of time within the time permitted, which is sixty (60) days.

12. Philip J. Berg, Esquire, as Relator, has standing pursuant to 31 U.S.C. §3730(b); virtually anyone can be a *qui tam* Relator. The statute specifically says: “[a] person may bring a civil action for a violation of §3729 for the person and for the United States Government.” The

Supreme Court has held the 1986 Amendments, which expanded standing to private relators in situations where private suits were previously foreclosed, created a new cause of action. Hughes Aircraft Co. v. United States ex rel. Schumber, 520 U.S. 939, 945 (1997). Philip J. Berg, Esquire, as Relator, has further standing pursuant to a decision by The United States Supreme Court in Sprint Communications Co. L.P. v. APCC Services Inc., \_\_\_ U.S. \_\_\_, 128 S.Ct. 2531 (2008) quoting Vermont v. United States, 529 U.S. 765 (2000) that a private citizen such as the Relator herein has standing to bring an action under the Federal False Claims Act as this.

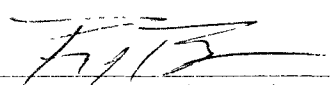
13. Therefore, Relator, Philip J. Berg, Esquire, requests this Honorable Court to:
  - a. Unseal this case;
  - b. Permit Philip J. Berg, Esquire, as the Relator in this case on his own Behalf and on Behalf of the Government of the United States of America to pursue this Federal False Claims Act.

14. Relator Berg, on his own behalf and on behalf of the United States Government, seeks all remedies available to him pursuant to the remedies set forth in the Federal False Claims Act, including a refund of all salary monies paid to the Defendant, Barack Hussein Obama, Jr., punitive damages and other certain fiscal penalties set forth in the Federal False Claims Act.

**WHEREFORE**, Relator, Philip J. Berg, Esquire on his own Behalf and as Relator on Behalf of the Government of the United States of America requests this Honorable Court to:

- a. Unseal this case; and
  
- b. Permit Philip J. Berg, Esquire, as the Relator in this case on his own Behalf and on Behalf of the Government of the United States of America to pursue this Federal False Claims Act against Barack Hussein Obama, Jr.

Respectfully submitted,



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Philip J. Berg, Esquire, Relator  
555 Andorra Glen Court, Suite 12  
Lafayette Hill, PA 19444-2531  
PA Identification No. 09867  
(610) 825-3134

**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA**

PHILIP J. BERG, ESQUIRE, *pro se*, on his own :  
BEHALF and on BEHALF of the :  
GOVERNMENT OF THE UNITED STATES :  
OF AMERICA, : Case No. 08-cv-1933  
Relator. :  
vs. :  
BARACK HUSSEIN OBAMA, JR., :  
Defendant. :

**ORDER TO UNSEAL CASE**  
**and**  
**RELATOR SHALL PROCEED WITH COMPLAINT**  
**PURSUANT TO FEDERAL FALSE CLAIMS ACT**

**AND NOW** this                      day of February, 2009 after consideration of the Motion of Philip J. Berg, Esquire, as the Relator, to Unseal this Case and to Permit him to Proceed with this Complaint Pursuant to the Federal False Claims Act, 31 U.S.C. 3729, et sequitur, against the Defendant Barack Hussein Obama, Jr. and Relator's Response to The Honorable Richard W. Robert's Order to Show Cause dated February 4, 2009 and Response to Keith V. Morgan, Assistant United States Attorney letter of February 12, 2009, and any other Response thereto, it is hereby

**ORDERED and DECREED** that this case shall immediately be Unsealed and Philip J. Berg, Esquire, shall proceed as the Relator in this case on his own Behalf and on Behalf of the Government of the United States of America against Defendant Barack Hussein Obama, Jr. pursuant to the Federal False Claims Act.

\_\_\_\_\_  
J.

**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA**

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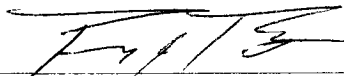
**CERTIFICATE OF SERVICE**

I, Philip J. Berg, Esquire, Relator, hereby certify that Relator's Response to The Honorable Richard W. Robert's Order to Show Cause and Response to Keith V. Morgan, Assistant United States Attorney letter of February 12, 2009 was served by mail through the United States Postal Service, this 16<sup>th</sup> day of February 2009 upon the following:

Keith V. Morgan  
Assistant United States Attorney  
United States Department of Justice  
555 Fourth Street, N.W.  
Washington, D.C. 20530

Ms. Sara McLean  
Department of Justice Trial Attorney  
United States Department of Justice  
Civil Division  
P.O. Box 261  
Washington, D.C. 20044

Respectfully submitted,

  
Philip J. Berg, Esquire, Relator  
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(610) 825-3134