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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

UNITED STATES OF AMERICA)	
<i>Ex rel.</i> Law Project for Psychiatric)	
Rights, an Alaskan non-profit)	
corporation,)	
)	Case No. 3:09-CV-00080-TMB
Plaintiff,)	
)	
vs.)	
)	
OSAMU H. MATSUTANI, MD, <i>et al.</i> ,)	
)	
Defendants.)	
<hr/>)	
UNITED STATES OF AMERICA,)	
ex rel Daniel I. Griffin,)	Case No. 3:09-CV-00246-TMB
)	(CONSOLIDATED)
Plaintiff,)	
)	
v.s)	
)	
RONALD A. MARTINO, MD., FAMILY)	
CENTERED SERVICES OF ALASKA, INC.,)	
an Alaska corporation, and SAFEWAY, INC.,)	
a Delaware corporation,)	
)	
Defendants.)	
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**MOTION FOR LEAVE TO FILE SUPPLEMENTAL
BRIEF AND FACTUAL MATERIAL**

Pursuant to Local Rule 7.1(h) *Relators* Law Project for Psychiatric Rights (PsychRights) and Daniel Griffin (Griffin), move for leave to file a supplemental brief and supplemental factual material with respect to motion papers at Dkt. Nos. 92, 141, 146 and 149 pertaining to whether Congress restricted coverage of outpatient drugs to "covered outpatient drugs." More specifically, the supplemental brief and factual material pertain to the argument raised in the replies by defendants at Dkt. Nos. 120 and 154 that deference should be given to the view expressed in two letters from two Centers for Medicare & Medicaid Services (CMS) employees signing for two other employees that Congress did not restrict Medicaid coverage for outpatient drugs to "covered outpatient drugs."

Responses to replies are not allowed without leave of the court. PsychRights anticipated it would address the issue during the requested oral argument, but at this point, it is not clear argument will be held. Since it does not appear the letters relied on by the defendants are of such a nature that deference should be accorded under any circumstances, and the authority cited by the defendants does not support their position on deference, it seems it would be helpful to the Court to allow PsychRights and Griffin to respond to this argument raised for the first time in the defendants' replies at Dkt. Nos. 120 and 154.

The event prompting this motion is the government just announced another settlement of civil False Claims Act cases and a criminal charge against Forest Laboratories for, among other things, promoting Celexa & Lexapro, both psychotropic drugs at issue in this case,¹ for illegally promoting their use in children and youth, and causing the presentment of false claims because there is no medically accepted indication for Celexa and Lexapro in children and youth. The civil settlement agreement is the supplemental factual material, for which leave to be filed is requested.

¹ See, Dkt. No. 107, ¶¶166(c) & 167(m), Dkt. No. 113, pp. 13 & 15, & Dkt. No. 113-6, pp. 5 & 6.

Both the proposed supplemental brief and supplemental factual material are filed herewith as Exhibits 1 & 2, respectively, along with a proposed order.

RESPECTFULLY SUBMITTED this 21st day of September, 2010.

Law Project for Psychiatric Rights, an Alaskan non-profit corporation

By: /s/ James B. Gottstein

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 21, 2010, a true and correct copy of this document, the Exhibits and proposed order were served electronically on all parties of record by electronic means through the ECF system as indicated on the Notice of Electronic Filing, or if not confirmed by ECF, by first class regular mail.

 /s/ James B. Gottstein

JAMES B. GOTTSTEIN