

Jeffrey M. Feldman, Alaska Bar No. 7605029  
Kevin M. Cuddy, Alaska Bar No. 0810006  
Feldman Orlansky & Sanders  
500 L Street, Suite 400  
Anchorage, AK 99501  
Telephone: (907) 677-8303

Eric P. Berlin, *pro hac vice*  
JONES DAY  
77 W. Wacker Dr.  
Chicago, IL 60601  
Telephone: (312) 782-3939

Counsel for Defendant  
Wal-Mart Stores, Inc.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA )  
Ex rel. Law Project for Psychiatric )  
Rights, an Alaskan non-profit corp., )  
 )  
Plaintiff, )  
 )  
OSAMU H. MATSUTANI, MD., )  
et al., )  
 )  
Defendants. )  
\_\_\_\_\_ )

Case No. 3:09-cv-0080-TMB

**DEFENDANTS' LOCAL 7.1(h)(2) MOTION FOR LEAVE TO PRESENT  
RECENTLY UNSEALED DOCUMENTS, WHICH ARE PERTINENT TO  
DEFENDANTS' MOTION TO DISMISS  
FOR LACK OF SUBJECT MATTER JURISDICTION UNDER  
THE FALSE CLAIMS ACT'S PUBLIC DISCLOSURE BAR [DKT. 89]**

Pursuant to D. Ak. Local Rule (Civil) 7.1(h)(2), Defendants seek leave to present to the Court PsychRights's recently unsealed Section 3730(b)(2) statement (the "Relator's Statement") and related documents (attached hereto as Exhibit A).

The Relator's Statement was under seal and, therefore, unavailable to Defendants when they filed their memorandum [Dkt. 91] and reply [Dkt. 119] in support of the Motion To Dismiss. On September 14, 2010, pursuant to Defendants' request, the Court entered an order unsealing, with some redactions, the Relator's Statement along with certain other documents that had been filed in this case prior to the U.S. government's decision not to intervene in the case. [Dkt. 158.] Although Defendants recognize that these documents are already on file, out of caution Defendants are filing this motion for leave to be able to present these documents to the Court because it is pertinent to Defendants' Motion To Dismiss under the False Claims Act's public disclosure bar. [Dkt. 89.]

The Relator's Statement is pertinent to the Motion To Dismiss because the Statement confirms that PsychRights's allegations are based upon information contained in public documents identified in the Motion To Dismiss. With its Section 3730(b)(2) statement, PsychRights was required to disclose to the government "substantially all material evidence and information the person possesses."<sup>1</sup> Tellingly, PsychRights's own

---

<sup>1</sup> 31 U.S.C. § 3730(b)(2).

presentation to the government directly relies upon public disclosures that Defendants identified in their Motion To Dismiss.

PsychRights concedes that it learned of the allegations in the present case while it was “working” on the state court case. *See* Ex. A at 3. This admission indicates that PsychRights’s allegations here are based upon that previous case. Likewise, the second full paragraph on page 3, including the quote from the state court complaint, demonstrates that this case is based upon the state court case. (The public disclosure bar does not require complete overlap between a case and a previous public disclosure.<sup>2</sup>) Similarly, page 8 states: “Through ¶ 22 of its September 29, 2008 Amended Complaint in *PsychRights v. Alaska*, and a contemporaneous e-mail, PsychRights specifically brought to these [state] defendants’ attention that the State of Alaska was authorizing reimbursement for and causing false Medicaid claims to be made.” *Id.* at 8. Here, PsychRights admits that its allegations in this case were previously disclosed in its state court case.

Perhaps most important, by filing the Utah-CMS letters in connection with its motion to unseal the complaint,<sup>3</sup> PsychRights acknowledges that this case is based upon those letters.

---

<sup>2</sup> *See* Dkt. 91 at 12-13; Dkt. 119 at 10-12; *United States ex rel. Poteet v. Medtronic, Inc.*, 552 F.3d 503, 514 (6th Cir. 2009) (“Any action based *even partly* upon public disclosures will be jurisdictionally barred.”) (internal quotes and citation omitted).

<sup>3</sup> *See also* Dkt. 91 at 4 n.6, 6 & Ex. 2.

WHEREFORE, Defendants respectfully request that the Court grant this motion and consider the Relator's Statement and related documents as well as the points made above when adjudicating Defendants' Motion To Dismiss under the False Claims Act's public disclosure bar.

Dated in Anchorage, Alaska this 21st day of September, 2010.

FELDMAN, ORLANSKY & SANDERS  
Attorneys for Defendant Wal-Mart Stores, Inc.

By: /s/ Kevin M. Cuddy

Jeffrey M. Feldman  
Alaska Bar No. 7605029  
Kevin M. Cuddy  
Alaska Bar No. 0810006  
500 L Street, Fourth Floor  
Anchorage, AK 99501  
Telephone: (907) 272-3538  
Fax: (907) 274-0819  
Email: [feldman@frozenlaw.com](mailto:feldman@frozenlaw.com)  
Email: [cuddy@frozenlaw.com](mailto:cuddy@frozenlaw.com)

JONES DAY  
Attorneys for Defendant Wal-Mart Stores, Inc.

By: /s/ Eric P. Berlin (consented)

Eric P. Berlin, *pro hac vice*  
77 West Wacker, Suite 3500  
Chicago, IL 60601  
Telephone: (312) 269-4117  
Fax: (312) 782-8585  
Email: [epberlin@jonesday.com](mailto:epberlin@jonesday.com)

DORSEY & WHITNEY, LLP  
Attorneys for Defendants Southcentral  
Foundation, Safeway, Inc. and Fred Meyer  
Stores, Inc.

By: /s/ Robert C. Bundy (consented)

Robert C. Bundy  
Alaska Bar No. 7206021  
1031 W. 4<sup>th</sup> Avenue, Suite 600  
Anchorage, AK 99501  
Telephone: (907) 257-7853  
Fax: (907) 276-4152  
Email: [bundy.robert@dorsey.com](mailto:bundy.robert@dorsey.com)

DANIEL S. SULLIVAN ATTORNEY  
GENERAL STATE OF ALASKA  
Attorneys for Defendant William Hogan,  
William Streur, Tammy Sandoval and  
Stephen McComb

By: /s/ R. Scott Taylor (consented)

R. Scott Taylor  
Alaska Bar No. 8507110  
Senior Assistant Attorney General  
1031 W. Fourth Avenue, Ste. 200  
Anchorage, AK 99501  
Telephone: (907) 272-3538  
Fax: (907) 274-0819  
Email: [scott.taylor@alaska.gov](mailto:scott.taylor@alaska.gov)

Stacie Kraly  
Alaska Bar No. 9406040  
Chief Assistant Attorney General  
P.O. Box 110300  
Juneau, AK 99811  
Telephone: (907) 465-4164  
Fax: (907) 465-2539  
Email: [stacie.kraly@alaska.gov](mailto:stacie.kraly@alaska.gov)

LANE POWELL LLC  
Attorneys for Defendant Alternative  
Community Mental Health d/b/a Denali Family  
Services

By: /s/ Matthew W. Claman (consented)

Matthew W. Claman  
Alaska Bar No. 8809164  
301 W. Northern Lights Blvd., Suite 301  
Anchorage, AK 99503-2648  
Telephone: (907) 277-3311  
Fax: (907) 276-2631  
Email: [clamann@lanepowell.com](mailto:clamann@lanepowell.com)

STOEL RIVES LLP  
Attorneys for Defendant Thomson Reuters  
(Healthcare) Inc.

By: /s/ James E. Torgerson (consented)

James E. Torgerson  
Alaska Bar No. 8509120  
510 L Street, Suite 500  
Anchorage, AK 99501-1959  
Telephone: (907) 277-1900  
Fax: (907) 277-1920  
Email: [jetorgerson@stoel.com](mailto:jetorgerson@stoel.com)

SATTERLEE STEPHENS BURKE & BURKE  
LLP

Attorneys for Defendant Thomason Reuters  
(Healthcare) Inc.

By: /s/ James F. Rittinger (consented)

James F. Rittinger, *pro hac vice*  
Thomas J. Cahill, *pro hac vice*  
230 Park Avenue, Suite 1130  
New York, NY 10169  
Telephone: (212) 818-9200  
Fax: (212) 818-9606  
Email: [tcahill@ssbb.com](mailto:tcahill@ssbb.com)  
Email: [jrittinger@ssbb.com](mailto:jrittinger@ssbb.com)

SONOSKY, CHAMBERS, SACHSE, MILLER  
& MUNSON, LLP

Attorneys for Defendants Heidi F. Lopez-  
Coonjohn, MD, Robert D. Schults, MD, Mark  
H. Stauffer, MD, and City and Borough of  
Juneau, Alaska (Bartlett Regional Hospital)

By: /s/ Richard D. Monkman (consented)

Richard D. Monkman  
Alaska Bar No. 8011101  
Myra M. Munson  
Alaska Bar No. 0811103  
302 Gold Street, Suite 201  
Juneau, AK 99801  
Telephone: (907) 586-5880  
Fax: (907) 586-5883  
Email: [dick@sonoskyjuneau.com](mailto:dick@sonoskyjuneau.com)  
Email: [myra@sonoskyjuneau.com](mailto:myra@sonoskyjuneau.com)

Kay Gouwens  
Alaska Bar No. 8106023  
900 West 5<sup>th</sup> Avenue, Suite 700  
Anchorage, AK 99501  
Telephone: (907) 258-6377  
Fax: (907) 272-8332  
Email: [kay@sonosky.net](mailto:kay@sonosky.net)

SEDOR, WENDLANDT, EVANS &  
FILIPPI, LLC  
Attorneys for Defendants Kerry Ozer, MD and  
Claudia Phillips, MD

By: /s/ Allen Clendaniel (consented)

Allen Frank Clendaniel  
Alaska Bar No. 0411084  
Carolyn Heyman-Layne  
Alaska Bar No. 0405016  
500 L Street, Suite 500  
Anchorage, AK 99501  
Telephone: (907) 677-3600  
Fax: (907) 677-3605  
Email: [clendaniel@alaskalaw.pro](mailto:clendaniel@alaskalaw.pro)  
Email: [heyman-layne@alaskalaw.pro](mailto:heyman-layne@alaskalaw.pro)

DELANEY WILES, INC.  
Attorneys for Defendant Peninsula Community  
Health Services of Alaska, Inc.

By: /s/ Howard A. Lazar (consented)

Howard A. Lazar  
Alaska Bar No. 8604013  
1007 West Third Avenue, Suite 400  
Anchorage, AK 99501  
Telephone: (907) 279-3581  
Fax: (907) 277-1331  
Email: [hal@delaneywiles.com](mailto:hal@delaneywiles.com)



CLAPP, PETERSON, VAN FLEIN,  
TIEMESSEN & THORSNESS, LLC  
Attorneys for Defendants Elizabeth Baisi, M.D.;  
L. Judith Bautista, M.D.; Ruth Dukoff, M.D.;  
and Jan Kiele, M.D.

By: /s/ Matthew K. Peterson (consented)

Matthew K Peterson  
Alaska Bar No. 8006038  
Linda J. Johnson  
Alaska Bar No. 8911070  
711 H Street, Suite 620  
Anchorage, AK 99501-3454  
Telephone: (907) 272-9631  
Fax: (907) 272-9586  
Email: [mkp@cplawak.com](mailto:mkp@cplawak.com)  
Email: [ljj@cplawak.com](mailto:ljj@cplawak.com)

CLAPP, PETERSON, VAN FLEIN,  
TIEMESSEN & THORSNESS, LLC  
Attorneys for Defendants Ronald A. Martino,  
M.D.; Irvin Rothrock, M.D.; and Fairbanks  
Psychiatric and Neurological Clinic

By: /s/ John J. Tiemessen (consented)

John J. Tiemessen  
Alaska Bar No. 9111105  
Lisa C. Hamby  
Alaska Bar No. 0111063  
411 Fourth Avenue, Suite 300  
Fairbanks, AK 99701  
Telephone: (907) 479-7776  
Fax: (907) 479-7966  
Email: [jtt@cplawak.com](mailto:jtt@cplawak.com)  
Email: [lch@cplawak.com](mailto:lch@cplawak.com)

BROWN, WALLER & GIBBS, PC  
Attorneys for Defendants Lucy Curtiss, M.D.,  
Sheila Clark M.D. and Hugh Starks, M.D.

By: /s/ Keith E. Brown (consented)

Keith E. Brown  
Alaska Bar No. 6903013  
821 N Street, Suite 202  
Anchorage, AK 99501  
Telephone: (907) 276-2050  
Fax: (907) 276-2051  
Email: [brownwag@alaska.net](mailto:brownwag@alaska.net)

LAW OFFICE OF VANCE A. SANDERS,  
LLC  
Attorneys for Defendant Juneau Youth  
Services, Inc.

By: /s/ Vance A. Sanders (consented)

Vance A. Sanders  
Alaska Bar No. 8611131  
P.O. Box 240090  
Douglas, AK 99284  
Telephone: (907) 586-1648  
Fax: (907) 586-1649  
Email: [vsanders@gci.net](mailto:vsanders@gci.net)

### **CERTIFICATE OF SERVICE**

I hereby certify that on the 21st day of September, 2010, a copy of the foregoing document was served electronically on Allen Frank Clendaniel; Brewster H. Jamieson; Carolyn Heyman-Layne; Cheryl Mandala; Daniel W. Hickey; David B. Robbins; Evan Craig Zoldan; Gary M. Guarino; Howard S. Trickey; James B. Gottstein; James E. Torgerson; John J. Tiemessen; Matthew K. Peterson; Matthew W. Claman; R. Scott Taylor; Renee M. Howard; Richard D. Monkman; Robert C. Bundy; Sanford M. Gibbs; Stacie L. Kraly, Vance A. Sanders, Howard A. Lazar, Eric P. Berlin, Thomas J. Cahill, Kay E.M. Gouwens, Linda J. Johnson, Myra M. Munson, James F. Rittinger, Keith E. Brown, James B. Stoetzer and John Foster Wallace.

s/ Kevin M. Cuddy