IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA, ex rel. Law Project for Psychiatric Rights, Plaintiff, vs. OSAMU H. MATSUTANI, et al., Defendants.	Case No. 3:09-cv-0080-TMB

ORDER CLARIFYING AND AMENDING THE COURT'S SEALING ORDER DATED JANUARY 25, 2010

This is a *qui tam* action under the False Claims Act ("FCA").[1] Relator Law Project for Psychiatric Rights alleges that the Defendants - consisting of various medical services providers, pharmacies, state officials, and a pharmaceutical data publisher - caused the submission of false claims for reimbursement for psychiatric drug prescriptions to children and youth under the federal Medicaid program and Children's Health Insurance Program.[2] This Order addresses the Defendants' motion to clarify the Court's Sealing Order dated January 25, 2010.[3] For the reasons explained below, the Court hereby unseals Docket Nos. 2, 3-2, 5, 6, 10, 11, 12, 13, and 15, unseals a redacted copy of Docket No. 3-1, and orders the United States to provide proposed redactions to Docket Nos. 3, 4, 7, 8, and 9 for the Court's *in camera* review no later than September 28, 2010.

I. BACKGROUND

The FCA provides that a private person may bring an action on behalf of the United States by filing a complaint under seal.[4] The complaint is to remain under seal for at least 60 days, during

[1] 31 U.S.C. § 3729-3732.

[2] *See* Dkt. 107.

[3] Dkt. 57.

[4] 31 U.S.C. § 3730(b)(2).

which the Government may decide to intervene in the action.[5] The Government may extend the 60 day period by moving for extension of time "supported by affidavits or other submissions in camera."[6] Before the file is unsealed, the Government must elect to intervene and take over the action or decline and allow the relator to conduct it.[7] The complaint is not served on the defendants until the file is unsealed.[8] The purpose of the sealing period is to allow the Government to investigate the claim and strategize without "tip[ping] off" the defendants, who may also be the subjects of a criminal investigation.[9]

The Relator commenced this action under seal on April 27, 2009.[10] Approximately sixty days later, the Relator filed its "Motion to Unseal Complaint (If Necessary) and Serve on Defendants" ("Motion to Unseal").[11] The Government responded to the Relator's Motion to Unseal by moving for an extension of the 60 day sealing period,[12] which the Relator opposed.[13] The Court denied the Relator's Motion to Unseal and granted the Government's motion for an extension of time.[14]

The Government subsequently declined to intervene in this action, and requested that the Court enter an order unsealing the complaint, but directing that all other prior filings "remain under seal because in discussing the content and extent of the United States' investigation, such papers

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[5] *Id.*

[6] *Id.* § 3730(b)(3).

[7] *Id.* § 3730(b)(4).

[8] *Id.* § 3730(b)(2).

[9] *United States ex rel. Costa v. Baker & Taylor, Inc.*, 955 F. Supp. 1188, 1189 (N.D. Cal. 1997).

[10] Dkts. 1-2.

[11] Dkts. 3 - 4.

[12] Dkts. 6 - 7 & 9.

[13] Dkt. 8.

[14] Dkts. 11 - 12.

[we]re provided to the Court alone for the sole purpose of evaluating whether the seal and time for making an election to intervene should be extended."[15] The Relator filed a response, seeking to clarify certain issues in the Government's submission, but did not object to the Government's request to seal the pre-declination filings.[16] The Court then unsealed the Complaint and ordered the prior filings (consisting of Docket Nos. 2 through 13 and 15, hereinafter the "Pre-Declination Filings") to be maintained under seal, as the Government had requested.[17]

Approximately six weeks later, the Defendants filed a motion to clarify the Court's Order, noting that some of the Pre-Declination Filings were viewable by the Defendants, though not the general public.[18] In response, this Court entered an Order directing the clerk to seal the Pre-Declination Filings from the Defendants (in addition to the public), directing the Defendants to secure any copies of the Pre-Declination Filings, and directing the Defendants not to view them.[19] The Court also initially expressed the view that there were two possible options given the history of this case: to either seal the documents from the public, or seal the documents from both the public and the Defendants.[20] The Court directed the Government to respond to the Order and indicated that any interested party should respond thereafter.[21]

The Government filed a response to the Order requesting that the Court maintain the seal as to both the public and the Defendants so as to maintain the confidentiality of its investigative process and work product.[22] It argued that unsealing the Pre-Declination Filings would provide the Defendants with "insight into the government's general strategic and tactical approach to deciding

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[15] Dkt. 14.

[16] Dkt. 15.

[17] Dkt. 16.

[18] Dkt. 57.

[19] Dkt. 64.

[20] *Id.*

[21] *Id.*

[22] Dkt. 71 at 2, 4.

when suits are brought, how they are conducted, and on what terms they may be settled."[23] The Government further warned that revealing "the story of the government's investigation in the present case" would result in a "chilling effect on the content of future motions for an extension."[24]

The Relator then responded by requesting the Court to unseal Docket Nos. 10 and 13, in particular, and suggesting that the Court should unseal all of the Pre-Declination Filings.[25] The Defendants also filed a response, arguing that the Pre-Declination Filings should be unsealed with respect to both the Defendants and the public.[26] It is apparent, however, that the Defendants are most interested in the Relator's written disclosure to the United States, provided pursuant to 31 U.S.C. § 3730(b)(2), which appears as Exhibit 1 to the Relator's Motion to Unseal.[27] The Defendants argue that this document may provide evidence that this action is barred by the FCA's "public disclosure bar" under § 3730(e)(4).[28]

The Government submitted a reply, arguing that Docket Nos. 3 through 4 and 6 through 9, specifically, should not be unsealed because they "reveal the government's investigative process or work product."[29] The Government did not provide any specific description of how the remaining materials - at Docket Nos. 2, 10 through 13, and 15 - reveal its investigative process or work product.

II. DISCUSSION

The overwhelming majority of courts that have considered the issue have found that by permitting *in camera* submissions, the FCA "necessarily invests the court with authority to either

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[23] *Id.* at 6.

[24] *Id.* at 6 - 7.

[25] Dkt. 72.

[26] Dkt. 76 at 2.

[27] *See* Dkt. 3-1 at 2-10.

[28] Dkt. 76 at 4. The Defendants subsequently moved to dismiss this action based on the public disclosure bar. Dkt. 89.

[29] Dkt. 105.

maintain the filings under seal, or to make them available to the parties."[30] This is analogous to the court's authority to issue a discovery protective order under Rule 26(c), which requires balancing the need for disclosure against the potential harm that may result from the disclosure.[31] The Ninth Circuit has held that requests to seal discovery materials under Rule 26(c) do not implicate the same kinds of public access concerns that judicial records traditionally trigger.[32] Courts should nonetheless consider both the interests of the public and the defendants when determining whether FCA submissions should remain under seal.[33] Indeed, the taxpaying public has a particularly

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[30] *United States ex rel. Erickson v. Univ. of Washington Physicians*, 339 F. Supp. 2d 1124, 1126 (W.D. Wash. 2004). *Accord United States ex rel. Yannacopolous (Yannacopolous I)*, 457 F. Supp. 2d 854, 858 (N.D. Ill. 2006); *United States ex rel. Health Outcomes Techs.*, 349 F. Supp. 2d 170, 173 (D. Mass. 2004); *United States ex rel. Coughlin v. IBM Corp.*, 992 F. Supp. 137, 140 (N.D.N.Y. 1998); *United States ex rel. O'Keefe v. McDonnell Douglas Corp. (O'Keefe I)*, 902 F. Supp. 189, 191 (E.D. Mo. 1995); *United States ex rel. Dep't of Defense v. CACI Int'l Inc.*, 885 F. Supp. 80, 83 (S.D.N.Y. 1995); *United States ex rel. Mikes v. Straus*, 846 F. Supp. 21, 23 (S.D.N.Y. 1994); *United States ex rel. Howard v. Lockheed Martin Corp.*, No. 1:99-CV-285, 2007 U.S. Dist. LEXIS 37289, at *6 (S.D. Ohio May 22, 2007); *United States ex rel. Tiesinga v. Dianon Sys., Inc.*, No. 3:02CV1573 (MRK), 2006 WL 28606, at *1 (D. Conn. Oct. 3, 2006); *United States ex rel. Goodstein v. McLaren Regional Med. Ctr.*, No. 97-CV-72992-DT, 2001 U.S. Dist. LEXIS 2918, at *4-5 (E.D. Mich. Jan. 24, 2001); *but see United States ex rel. Fender v. Tenet Healthcare Corp.*, 105 F. Supp. 2d 1228, 1230-31 (N.D. Ala. 2000) (finding that the court had no authority to maintain information under seal indefinitely under the FCA).

[31] *Erickson*, 339 F. Supp. 2d at1126 (citing Fed. R. Civ. P. 26(c)); *Yannacopolous I*, 457 F. Supp. 2d at 858 (N.D. Ill. 2006); *Mikes*, 846 F. Supp. at 23.

[32] *See Pintos v. Pacific Creditors Assoc.*, 605 F.3d 665, 677-78 (9th Cir. 2010). Even if the Government's pre-declination filings should be considered "judicial records" that trigger the common law right of public access, the policy interests favoring the Government's ability to conduct an investigation without "tip[ping] off" the defendants and the Government's candor in providing the specific details of its efforts to investigate an FCA action when seeking an extension of time would likely constitute "compelling reasons" to maintain those records under seal. *See id.* at 679 (discussing the standard for sealing judicial records); *United States ex rel. Costa v. Baker & Taylor, Inc.*, 955 F. Supp. 1188, 1189 (N.D. Cal. 1997) (discussing the policy reasons for maintaining the FCA submissions under seal); *Tiesinga*, 2006 WL 28606, at *2 (similar).

[33] *See Costa*, 955 F. Supp. at 1189-90 (noting that "[c]ourt records are normally open to the public" and citing *Nixon v. Warner Commc'ns*, 435 U.S. 589, 597 (1978)).

significant interest in FCA cases.[34] Here, beyond the public's general interest in FCA matters, the Government and the Parties have raised three primary issues: (a) the Government's interest in protecting its confidential investigative methods and techniques; and (b) the Government's interest in protecting its work product; and (c) the Defendants' interest in obtaining the Relator's disclosure statement in order to help them defend this action.

A. The Government's Confidential Investigative Methods and Techniques

When determining whether to maintain FCA submissions under seal, courts have considered whether "disclosure would: (1) reveal confidential investigative methods or techniques; (2) jeopardize an ongoing investigation; or (3) harm non-parties."[35] Thus, documents that reveal the "diligence of the government's investigation, its investigative strategy, and its need for additional time to investigate" may be maintained under seal.[36] This protection encourages the Government "to be as candid as possible about the status of its investigation" when requesting an extension of time from the court.[37] Accordingly, where the Government must reveal the details of its investigation or information protected by work product doctrine, "courts should be vigilant to ensure that the Government is not penalized for its commendable candor with the court."[38] At the same time, however, documents that merely describe "routine or general investigative procedures, without implicating specific people or substantive details" should not be maintained under seal.[39] In balancing the need to encourage the Government to be candid with the court with the rights of the defendants and the public, some courts have directed the Government to propose redactions to

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[34] *See United States ex rel. Schweizer v. Oce, N.V.*, 577 F. Supp. 2d 169, 172 (D.D.C. 2008).

[35] *United States ex rel. Lee v. Horizon West, Inc.*, No. C 00-2921 SBA, 2006 WL 305966, at *2 (N.D. Cal. Feb. 8, 2006).

[36] *United States ex rel. Stephens v. Prabhu*, No. CV-S-92-653-LDG (LRL), 1994 WL 761236, at *1 (D. Nev. Dec. 9, 1994).

[37] *United States ex rel. Tiesinga v. Dianon Sys., Inc.*, No. 3:02CV1573 (MRK), 2006 WL 28606, at *2 (D. Conn. Oct. 3, 2006).

[38] *Id.*

[39] *Lee*, 2006 WL 305966, at *2.

documents that it maintains would reveal the specific details of its investigative techniques or work product.[40]

B. The Work Product Doctrine

The work product doctrine protects materials prepared by an attorney in anticipation of litigation or for trial from disclosure.[41] It evolved out of the Supreme Court's decision in *Hickman v. Taylor*.[42] In *Hickman*, the Court found that work product should be protected from discovery because lawyers must "work with a certain degree of privacy, free from unnecessary intrusion by opposing parties and their counsel" in order to ensure "the orderly prosecution and defense of legal claims."[43] Work product may be reflected "in interviews, statements, memoranda, correspondence, briefs, mental impressions, personal beliefs, and countless other tangible and intangible ways."[44] Thus, the "primary purpose" of the doctrine is to prevent one party from exploiting another party's efforts to prepare for litigation or trial.[45] The work product doctrine was later partially codified[46] in Rule 26(b)(3), which protects documents and tangible things prepared by parties and their attorneys in anticipation of litigation from discovery.[47]

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[40] *See Tiesinga*, 2006 WL 28606, at *3; *United States ex rel. Becker v. Tools & Metals, Inc.*, No. 3:05-CV-0627-L, 2008 U.S. Dist. LEXIS 63421, at *9-10 (N.D. Texas Aug. 19, 2008); *see also United States ex rel. Howard v. Lockheed Martin Corp.*, No. 1:99-CV-285, 2007 U.S. Dist. LEXIS 45158, at *2-3 (S.D. Ohio June 21, 2007) (noting that the Government filed proposed redactions after being ordered to participate in an *in camera* review of the documents at issue with the court).

[41] *See United States v. Torf*, 357 F.3d 900, 907 (9th Cir. 2004).

[42] 329 U.S. 495, 510-12 (1947).

[43] *Id.* at 510.

[44] *Id.* at 511.

[45] *Holmgren v. State Farm Mut. Auto. Ins. Co.*, 976 F.2d 573, 576 (9th Cir. 1992) (citation omitted).

[46] *See, e.g.*, *United States v. Deloitte LLP*, 610 F.3d 129, 136 (D.C. Cir. 2010) (noting that *Hickman* still protects "intangible work product independent of Rule 26(b)(3)").

[47] Fed. R. Civ. P. 26(b)(3)(A).

A party may still discover "ordinary" work product after showing that it has a "substantial need" for the materials "and cannot, without undue hardship, obtain their substantial equivalent by other means."[48] In the Ninth Circuit, work product reflecting attorney mental impressions (known as "opinion work product"), may only be discovered on a showing that the "mental impressions are *at issue* in a case and the need for the material is compelling."[49]

A party may waive work product protection by disclosing protected materials to third parties where the disclosure poses a "substantial danger" that potential adversaries will obtain the information.[50] In contrast, persons sharing a common interest in litigation may communicate confidentially without waiving work product protection because there is no adverse relationship.[51] In an FCA action, the relator and the Government share such a common interest relationship, even where the Government has declined to intervene.[52] Nonetheless, a party may waive the protection where it does not take "reasonable steps under the circumstances" to maintain it.[53] Indeed, in one FCA case, the court found that the relator waived any privilege in its disclosure statement by filing it with the court.[54]

Some courts have held that the work product doctrine does not apply to materials filed prior to the Government's intervention decision in an FCA action because these materials are not

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[48] *Id.*

[49] *Holmgren*, 976 F.2d at 577 (emphasis original); *cf.* Fed. R. Civ. P. 26(b)(3)(B) ("If the court orders discovery of [work product] materials, it must protect against disclosure of mental impressions, conclusions, opinions, or legal theories of a party's attorney or other representative concerning the litigation.").

[50] *Samuels v. Mitchell*, 155 F.R.D. 195, 200-01 (N.D. Cal. 1994).

[51] *See United States ex rel. Burroughs v. DiNardi Corp.*, 167 F.R.D. 680, 685-86 (S.D. Cal. 1996).

[52] *Id.* at 686. *Accord United States ex rel. Bagley v. TRW Inc.*, 212 F.R.D. 554, 560-62 (C.D. Cal. 2003) (finding that the relator did not waive work product protection by providing disclosure statement to the Government).

[53] *Cf. SEC v. Roberts*, 254 F.R.D. 371, 378 (N.D. Cal. 2008).

[54] *United States ex rel. Schweizer v. Oce, N.V.*, 577 F. Supp. 2d 169, 173-76 (D.D.C. 2008).

technically being exchanged in discovery.[55] However, courts have treated the FCA pre-intervention sealing procedure as being analogous to discovery,[56] and the policies underlying the work product doctrine,[57] suggest that its principles should apply beyond a technical interpretation of what constitutes "discovery."

C. FCA Disclosure Statements

When a private person or entity initiates an FCA action it must provide the Government with a copy of the complaint and a "written disclosure of substantially all material evidence and information the person possesses."[58] The purpose of the requirement is to provide the Government "with enough information on alleged fraud to be able to make a well reasoned decision on whether it should participate in the filed lawsuit or allow the relator to proceed alone."[59] Accordingly, relators should be encouraged to prepare "thorough and helpful disclosure statements" to allow the Government to make sound intervention decisions.[60] The text of the FCA does not provide any guidance as to whether disclosure statements are discoverable or privileged.[61]

Courts have reached a variety of different conclusions as to whether the work product doctrine precludes discovery of disclosure statements.[62] At one end of the spectrum, at least one

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[55] *United States ex rel. Health Outcomes Techs.*, 349 F. Supp. 2d 170, 174 (D. Mass. 2004); *United States ex rel. Goodstein v. McLaren Regional Med. Ctr.*, No. 97-CV-72992-DT, 2001 U.S. Dist. LEXIS 2918, at *9 (E.D. Mich. Jan. 24, 2001).

[56] *See, e.g., United States ex rel. Erickson v. Univ. of Washington Physicians*, 339 F. Supp. 2d 1124, 1126 (W.D. Wash. 2004).

[57] *See Hickman v. Taylor*, 329 U.S. 495, 510-12 (1947).

[58] 31 U.S.C. § 3130(b)(2).

[59] *United States ex rel. Bagley v. TRW Inc.*, 212 F.R.D. 554, 555 (C.D. Cal. 2003) (citation omitted).

[60] *Id.* at 562.

[61] *United States ex rel. Yannacopoulos v. General Dynamics (Yannacopoulos II)*, 231 F.R.D. 378, 381 (N.D. Ill. 2005).

[62] *See id.* at 382-84 (discussing cases).

court has found that a disclosure statement did not constitute work product.[63] At the other end of the spectrum, at least one court has found that disclosure statements constitute opinion work product.[64] Most courts that have discussed the issue appear to have found that disclosure statements constituted ordinary work product.[65] Of these courts, some have found that they were nonetheless discoverable where the defendants established that they had a "substantial need" for the materials and could not obtain equivalent information without "undue hardship."[66] Still, even where a disclosure statement is otherwise discoverable, some courts have nonetheless provided that any mental impressions, conclusions, opinions, or legal theories should be redacted before the disclosure statements were provided to the defendants.[67]

Unlike this case, however, in nearly all of these cases *the relators* sought to withhold the disclosure statements from the defendants.[68] In the one instance that this Court has found where *the*

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[63] *United States ex rel. Burns v. A.D. Roe Co.,* 904 F. Supp. 592, 594 (W.D. Ky. 1995).

[64] *Bagley*, 212 F.R.D. at 555.

[65] *See United States ex rel. O'Keefe v. McDonnell Douglas Corp. (O'Keefe II)*, 918 F. Supp. 1338, 1346 (E.D. Mo. 1996) (finding that the plain language of the disclosure requirement permitted the court to find that the disclosure statement was at least ordinary work product); *United States ex rel. Stone v. Rockwell Int'l Corp.*, 144 F.R.D. 396, 400-02 (D. Colo. 1992); *United States ex rel. Hunt v. Merck-Medco Managed Care, LLC*, No. 00-CV-737, 2004 U.S. Dist. LEXIS 7152, at *7 (E.D. Pa. Apr. 21, 2004) (finding that disclosure statements at least constituted ordinary work product, if not opinion work product); *see also United States ex rel. Burroughs v. DeNardi Corp.*, 167 F.R.D. 680, 684-85 (S.D. Cal. 1996) (finding that the disclosure statement likely constituted opinion work product, but directing the relator to provide it, along with other documents, for *in camera* review).

[66] *O'Keefe II*, 918 F. Supp. at 1346; *Stone*, 144 F.R.D. at 401-02.

[67] *See Stone*, 144 F.R.D. at 401; *see also Grand ex rel. United States v. Northop Corp.*, 811 F. Supp. 333, 337 (S.D. Ohio 1992) (noting that the magistrate had previously found that the disclosure statement did not constitute work product but remanding for the magistrate to inspect the document *in camera* and have relator's counsel's analysis and opinions redacted).

[68] *See Yannacopolous II*, 231 F.R.D. at 380; *Bagley*, 212 F.R.D. at 555; *O'Keefe II*, 918 F. Supp. at 1345; *Burroughs*, 167 F.R.D. at 681-82; *Robinson*, 824 F. Supp. at 831-32; *Grand*, 811 F. Supp. at 337; *Stone*, 144 F.R.D. at 398; *Hunt*, 2004 U.S. Dist. LEXIS 7152, at *1.

Government - as opposed to the relator - sought to maintain the disclosure statement under seal, the court ordered it to be disclosed.[69]

D. Application

Any analysis of whether the Pre-Declination Filings should be unsealed must begin with a discussion of the interests at stake. The Government undoubtedly has a strong interest in protecting the specific details of its confidential investigatory methods and techniques as well as its work product. The Government has not asserted any interest in *the Relator's* work product, even if it were entitled to assert that protection on the Relator's behalf.

As noted above, the public also has an interest in any FCA action. Here, Relator's allegations, if proven true, would establish a significant monetary fraud and - potentially - harm to many children and young adults.[70] It is likely for these reasons that the Relator has actively sought to have this Court to unseal the Pre-Declination Filings.[71] The Relator has not invoked the work product doctrine or any other privilege, and indeed, the Relator filed many of the Pre-Declination Filings, including its disclosure statement, with the court. Accordingly, to the extent that the work product doctrine may have protected any of the Relator's filings, the Relator has waived that protection by failing to assert it.

Defendants also indicate that they have a strong interest in the Pre-Declination Filings as they believe the documents - particularly the Relator's disclosure statement - will help them mount their defense of this action.[72]

Accordingly, the Court should only maintain those filings that specifically implicate the Government's investigative methods or techniques or work product under seal. Some of the documents currently under seal do not implicate either the Government's investigative process or any possible work product claims. These include the filings at Docket Nos. 2, 3-2, 5, 6, 10, 11, 12,

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[69] *Burns*, 904 F. Supp. at 593-94.

[70] *See* Dkt. 107.

[71] *See* Dkt. 72.

[72] *See* Dkt. 76.

13, and 15. Therefore, these documents should be unsealed as to both the Defendants and the public.

Some documents do arguably reveal the Government's investigative methods or techniques. The Relator's Motion to Unseal,[73] supporting affidavit,[74] and Exhibits 2 through 3[75] include discussions between the Relator's counsel and the Government about its investigation. Some of the Government's and the Relator's submissions addressing the Government's motion for an extension of time also include discussions of the Government's efforts to investigate this case.[76] However, much of these submissions consist of discussions of legal authority and matters that do not invoke any concerns about revealing the Government's investigative process or work product.[77] Thus, the Government is ordered to submit proposed redactions to the submissions at Docket Nos. 3, 4, 7, 8, and 9. In making its proposed redactions, the Government should be careful only to redact those portions of these submissions that contain specific discussions of its investigative methods or techniques or reveal its work product, as opposed to general discussions of matters which it cannot credibly claim reveal its investigatory process or represent work product.[78]

Docket No. 3-1 includes the Exhibits to the Relator's Motion to Unseal. As noted above, Exhibits 2 and 3 consist of discussions between Relator's Counsel and the Government about its investigation.[79] Exhibit 1 is the Relator's disclosure statement.[80] The Defendants argue that it is

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[73] Dkt. 3.

[74] Dkt. 4.

[75] Dkt. 3-1 at 11-12.

[76] Dkts. 7-9.

[77] *See id.*

[78] *Cf. United States ex rel. Tiesinga v. Dianon Sys., Inc.*, No. 3:02CV1573 (MRK), 2006 WL 28606, at *2-3 (D. Conn. Oct. 3, 2006).

[79] Dkt. 3-1 at 11-12.

[80] *Id.* at 2-10.

discoverable and will help them prepare their defense of this action.[81] The Defendants further assert that since the disclosure was provided by the Relator to the Government, it cannot possibly contain any information about the Government's investigative process or work product.[82] The Government does not appear to contest this, merely arguing that documents that include statements made by its representatives to the Relator (presumably referring to the Motion to Unseal and Exhibits 2-3) include information about its investigation of this case.[83] The Court has reviewed the disclosure statement and agrees that it does not contain any information about the Government's investigative process or anything that arguably represents the Government's work product. Accordingly, it should be unsealed as to both the Defendants and the public.

The remainder of Docket No. 3-1 consists of Exhibits 4-7 to the Relator's Motion to Unseal. These Exhibits are correspondence between the State of Utah Attorney General's office and the Department of Health and Human Services.[84] As the Defendants note, these documents have been, and currently are, publicly available on the Relator's website.[85] Even if these materials were arguably protected, the Government has not made any prior effort to maintain their secrecy and accordingly, they should be unsealed as to both the Defendants and the public.

In light of the fact that Docket No. 3-1 includes some information that should remain under seal (Exhibits 2 and 3) and some that should be made available to the Defendants and the public (Exhibits 1 and 4 through 7), the Court will unseal a redacted copy of Docket No. 3-1 that omits Exhibits 2 and 3.

III. CONCLUSION

For the foregoing reasons, the Court hereby ORDERS that:

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[81] *See* Dkt. 76 at 3-6.

[82] *Id.*

[83] Dkt. 105 at 4.

[84] Dkt. 3-1 at 13-18.

[85] *See* Dkt. 76 at 3 n.1; Law Project for Psychiatric Rights, PsychRights Medicaid Fraud Initiative Against Psychiatric Drugging of Children & Youth, http://psychrights.org/index.htm (last visited Sept. 7, 2010).

1. The Clerk of the Court shall unseal Docket Nos. 2, 3-2, 5, 6, 10, 11, 12, 13, and 15;
2. The Clerk of the Court shall make the redacted copy of Docket No. 3-1, to be provided by the Court, publicly available through the Court's electronic filing system;
3. The United States of America shall provide its proposed redactions to Docket Nos. 3, 4, 7, 8, and 9, consistent with this Order, to the Court *in camera* no later than September 28, 2010; and
4. The Clerk of the Court shall maintain Docket Nos. 3, 4, 7, 8, and 9 under seal, until further notice from this Court.

Dated at Anchorage, Alaska, this 14th day of September, 2010.

/s/ Timothy Burgess
Timothy M. Burgess
United States District Judge