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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)	Case No. 3:09-cv-00080 TMB
)	
Plaintiffs,)	
)	
vs.)	<i>UNDER SEAL</i>
)	
OSAMU H. MATSUTANI, MD, <i>et al.</i> ,)	
)	
Defendants.)	

**OPPOSITION TO UNITED STATES' APPLICATION FOR AN
EXTENSION OF TIME**

Qui tam relator Law Project for Psychiatric Rights (PsychRights®) opposes the Government's application for a six month extension of the seal and intervention period (Application). The Application is untimely. Most importantly, however, the Government has failed to make the requisite showing of good cause justifying any extension, let alone for six months. The Government will not be prejudiced by a denial of the Application because if the Government is truly interested in pursuing this fraud, it may still move for intervention under 31 U.S.C. §3730(c)(3), which PsychRights would welcome. It is the delay in prosecution represented by an extended sealing period to which PsychRights is opposed.

I. THE APPLICATION IS UNTIMELY

There is the threshold question of whether the Application is timely. 31 U.S.C. § 3730(b)(4) provides:

(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.

The Government states that the Complaint and disclosure of substantially all material evidence and information (Written Disclosure) were served on the Attorney General on May 4, 2009.¹ However, the 60 day time period begins to run when the Government "receives" the complaint and written disclosure.² The Government received the Complaint and Written Disclosure April 27, 2009, by hand delivery to the United States Attorney for Alaska.³ That it took seven days after that for the United States Postal Service to deliver them to the Attorney General in Washington does not change that the Government "received" the Complaint and Written Disclosure on April 27, 2009. PsychRights respectfully suggests the Government's Application is untimely.

Most importantly, however, it fails to satisfy the statutory requirements for obtaining the requested extension.

II. THE APPLICATION IS INSUFFICIENT

Congress' 1986 enactment of the Secrecy Provisions was the result of a compromise between Congress' desire for the expeditious processing of *qui tam* cases

¹ Dkt. No. 7, p. 2.

² 31 U.S.C. § 3730(b)(2) ("The Government may elect to intervene and proceed with the action within 60 days after it receives both the complaint and the material evidence and information)" (emphasis added))

³ Dkt. No. 3-2, Exhibit 1, page 1.

and concerns expressed by the United States Department of Justice (DOJ) that the filing of a *qui tam* suit by a private party might "tip off" investigation targets when the government's criminal inquiry was still at a sensitive stage.⁴ The DOJ stated that *qui tam* civil suits "might overlap with allegations already under criminal investigation."⁵ The Senate Report evidences the express intent of Congress that, "[t]he government should not, in any way, be allowed to unnecessarily delay lifting of the seal from the civil complaint or processing of the *qui tam* action."⁶ The Senate Report further explained that under the proposed amendments, the *qui tam* plaintiff was to act "as a check that the government does not neglect evidence, cause unduly [sic] delay, or drop the false claims case without legitimate reason."⁷

Congress intended to allow "good cause" extensions of the 60 day deadline only in the most extraordinary cases such as a pending criminal prosecution:

... Extensions will be granted, however, only upon a showing of 'good cause'. The Committee intends that courts weigh carefully any extensions on the period of time in which the Government has to decide whether to intervene and take over the litigation. The Committee feels that with the vast majority of cases, 60 days is an adequate amount of time to allow Government coordination, review and decision. Consequently, 'good cause' would not be established merely upon a showing that the Government was overburdened and had not had a chance to address the complaint. While a pending criminal investigation of the allegations contained in the *qui tam* complaint will often establish 'good cause' for staying the civil action, the Committee does not intend that criminal investigations be considered an automatic bar to proceeding with a civil fraud suit.⁸

⁴ 1986 U.S.C.C.A.N. at 5288-89.

⁵ *Id.* at 5289 (emphasis added).

⁶ S. Rep. No. 99-345, 99th Cong., 2d Sess. at 25, reprinted in 1986 U.S. Code Cong. & Admin. News at 5290.

⁷ *Id.* at 5290-91.

⁸ S. Rep. 345, 99th Cong., 2d Sess 24-25 (1986), reprinted in 1986 USCCAN 5266, 5289-90.

Here, the Government has presented nothing close to the sort of justification Congress required to obtain an extension. The Government's entire showing as to good cause, is:

While the government has been diligent in investigating the allegations conducting further inquiries of the relator, additional investigative work must be performed. Relator's allegations are complex.

Redacted

In short, the government requires additional time in order to make an adequately informed decision as to whether to intervene. Under the FCA, "good cause" exists for this request for an extension of time.⁹

Strikingly absent is any indication that the Government is concerned about "tipping off" any targets of any criminal investigation, which was the Department of Justice's stated reason for asking, and Congress' for granting, the limited seal period. Nor has the Government even asserted that unsealing the Complaint and serving the Defendants might prejudice any potential criminal investigation that it might start.

There is similarly no assertion unsealing and serving the complaint will prejudice any other interest of the Government. Instead, the Government stated:

Counsel for the United States has reviewed the documents produced by the relator and has had several preliminary telephone interviews with the relator in order to seek additional information. During the seal period, the Government intends to further investigate the relator's claims, review relevant claims data, and conduct interviews if appropriate.¹⁰

Since the Government may subsequently move to intervene under 31 U.S.C. §3730(c)(3) and PsychRights would welcome such intervention, there is no necessity for continuing the seal for the Government to perform the evaluation it says it will be performing. PsychRights respectfully suggests, there is simply no justification for delay.

Congress amended the False Claims Act specifically to put pressure on the Government to move these cases. This was recognized by the District Court for the

⁹ Dkt. No. 7, pp 4-5.

¹⁰ Dkt, No. 7, p. 2.

Southern District of New York in *United States by Dep't. of Defense and Pantagen Technologies International v. CACI International*,¹¹ citing to the Northern District of California case of *United States ex rel McCoy v. California Medical Review, Inc.*:¹²

("Congress' objectives in amending the Act [were] principally to expand the role of *qui tam* plaintiffs and to keep pressure on the United States to prosecute the cases") In the context of requesting extensions, Congress stated, "[t]he Government should not, in any way, be allowed to unnecessarily delay lifting of the seal from the civil complaint or processing of the *qui tam* litigation."

The problem here is the Government seeks an initial extension period three times longer than the period Congress indicated is an adequate amount of time in the "vast majority of cases," and has clearly indicated it will likely seek additional extensions. PsychRights respectfully suggests the Government's Application is insufficient and unnecessary and should be denied.¹³

III. CONCLUSION

For the foregoing reasons, PsychRights requests this Court **deny** the Government's Application to extend the sealing period and delay service of the Complaint.

DATED: July 2, 2009.

Law Project for Psychiatric Rights

James B.

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¹¹ 885 F.Supp 80, 82 (SDNY 1995), citations omitted.

¹² 715 F. Supp. 967 (ND Cal. 1989).

¹³ Alternatively, a much shorter period, say 30 days, might be granted with the Government obligated to make a real showing that it has investigated the claims and why any further extension might be necessary.

Certificate of Service

The undersigned hereby certifies that a copy hereof has been mailed this date to:

Eric Holder, U.S. Attorney
General
Attn: Evan Zoldan
U.S. Department of Justice
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Richard Pomeroy
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and upon filing will be notified by e-mail so that they may download it without delay.

Dated: July 2, 2009.

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