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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

**ALL DEFENDANTS’ REPLY TO PSYCHRIGHTS’S
RESPONSE TO REQUEST FOR ORAL ARGUMENT**

Defendants have requested oral argument on the four pending, and now fully briefed, motions to dismiss. [Dkt. #122] Plaintiff PsychRights filed a response to that request, not opposing the request for oral argument, but instead asking for four separate oral arguments, each “at least a few days apart, preferably a week.” [Dkt. #123]

PsychRights’s request for four separate oral arguments, as much as a week apart (therefore stretching over a month), should be denied for several reasons. *First*, having separate

arguments on four separate days would be inefficient for the Court. The motions are interrelated in part and arise from the same set of facts, which makes the motions conducive to one hearing. PsychRights's request would waste the Court's time with an inevitable increase in preparation time for each hearing and the unnecessary repetition of facts and legal contentions at the hearings. *Second*, PsychRights's proposed schedule would be inefficient and costly for Defendants, several of whose lead counsel are located in other Alaska cities or other states (Juneau, Fairbanks, Seattle, Chicago, New York). Defendants should not have to absorb the costs and wasted time of traveling to and appearing at multiple hearings solely to accommodate PsychRights's wish to be "able to concentrate on preparing for each motion separately." [Dkt. #123 at 2] *Third*, PsychRights has already had plenty of time to prepare for a hearing on the motions to dismiss. Indeed, PsychRights anticipated the issues raised by each motion even before Defendants filed the motions.¹ Moreover, PsychRights's counsel has time to prepare between now and the hearing. Finally, PsychRights's request is extraordinary. Single lawyers routinely handle multiple issues in one hearing.

Defendants, therefore, request that the Court set oral argument for the four motions to dismiss on a single day (or on two consecutive days if that schedule is more convenient for the court).

¹ See PsychRights's presentation entitled "Medicaid Fraud Initiative Against Psychiatric Drugging of Children & Youth," dated Jan. 26, 2010 (available at <http://psychrights.org/index.htm>, "PowerPoint Presentation"); PsychRights's Rule 26(f) Conference Memo, dated Feb. 22, 2010 (Dkt. #83 at Ex. A). Anticipating the "public disclosure bar" motion to dismiss for lack of subject matter jurisdiction (Dkt. #89), PsychRights noted in its January 2010 presentation that "anyone with *non-public information* . . . can bring" a *qui tam* FCA complaint. [Presentation at 10 (emphasis added); see also *id.* at 20 (noting "Non-Public Rule" under 31 U.S.C. § 3730(e)(4)(A)); Rule 26(f) Memo at 5.] Anticipating the State's motion (Dkt. #90), PsychRights noted in that presentation that it could sue state employees only "personally." [Presentation at 12.] PsychRights's Rule 26(f) Memo dedicated over two pages to the anticipated Rule 12(b)(6) motion challenging PsychRights's theory of falsity under the FCA (Dkt. #92). [Rule 26(f) Memo at 2-4.] Finally, the Rule 26(f) Memo also addressed whether PsychRights's complaint had met the Rule 9(b) pleading standard (Dkt. #83). [*Id.* at 5-7.]

Dated in Anchorage, Alaska this 1st day of June, 2010.

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CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of June, 2010, a copy of the foregoing **All Defendants' Reply To Psychrights's Response To Request For Oral Argument** 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; Linda Johnson; Matthew W. Claiman; R. Scott Taylor; Renee M. Howard; Richard D. Monkman; Kay E. Maassen Gouwens; Robert C. Bundy; Sanford M. Gibbs; Stacie L. Kraly, Vance A. Sanders and Howard A. Lazar.

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