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Tammy Sandoval, Steve McComb,  
and William Streur

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA**

UNITED STATES OF AMERICA	)	
<i>Ex rel.</i> Law Project for Psychiatric	)	
Rights, an Alaskan non-profit corp.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 3:09-cv-00080-TMB
	)	
OSAMU H. MATSUTANI, MD, <i>et al.</i>	)	
	)	
Defendants.	)	
_____	)	

**RESPONSE TO REQUEST FOR ORAL ARGUMENT ON  
REFILED MOTION FOR PRELIMINARY INJUNCTION  
AGAINST DEFENDANTS HOGAN AND STREUR [DKT. NO. 133]**

Defendants William Hogan and William Streur oppose scheduling oral argument on PsychRights’s Refiled Motion for Preliminary Injunction, at least until after the court has ruled on the four pending motions to dismiss. Those motions to dismiss have raised threshold issues of subject matter jurisdiction [Dkt. No. 89], failure to state a claim under the False Claims Act (FCA) [Dkt. No. 92], failure to allege any particulars of

fraud [Dkt. No. 83], and failure to state an FCA claim against these state officials in particular [Dkt. No. 90]. First, the court must address the challenge to its jurisdiction – a threshold question concerning the court’s “very power to hear the case” – prior to adjudicating any substantive issue such as the Motion for Preliminary Injunction.<sup>1</sup> Second, granting any one of the motions to dismiss would render moot the Motion for Preliminary Injunction (and would defeat the “likelihood of success” element for a preliminary injunction).<sup>2</sup> Judicial efficiency is best served by deferring argument on the preliminary injunction motion until the court has fully considered the defendants’ motions to dismiss after informed argument by all of the affected parties.

Furthermore, there is no need for an expedited ruling to protect “the federal government [from] facing irreparable harm due to the [alleged] continuing violation of federal law which is the subject of the [preliminary injunction] motion.” [Dkt. No. 133 at 2] Under the FCA’s *qui tam* procedures, the United States investigated PsychRights’s claim, and notified the court of its decision not to intervene in this action [Dkt. No. 14]. The U.S. government also presumably could refuse any additional payment for any uncovered Medicaid claims submitted by the State. Moreover, the FCA provides for

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<sup>1</sup> *Petruska v. Gannon Univ.*, 462 F.3d 294, 302 (3d Cir. 2006); *Capitol Leasing Co. v. F.D.I.C.*, 999 F.2d 188, 191 (7th Cir. 1993) (court must dismiss without reaching merits if there is no jurisdiction).

<sup>2</sup> *See, e.g., Communications Telesystems International v. California Public Utilities Comm.*, 14 F.Supp.2d 1165, 1167 (N.D. Cal. 1998) (finding it appropriate to rule on threshold issues raised in Rule 12(b)(1) and 12(b)(6) motions before motion for preliminary injunction).

monetary damages that would ultimately provide a complete and adequate remedy if there were continuing violations of the FCA.

DATED this 14<sup>th</sup> day of June, 2010, at Anchorage, Alaska.

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Attorneys for the State Defendants

By: /s/ Stacie L. Kraly  
Chief Assistant Attorney General  
Alaska Bar No. 9406040

/s/ R. Scott Taylor  
Senior Assistant Attorney General  
Alaska Bar No. 8507110

**CERTIFICATE OF SERVICE**

I hereby certify that on June 14, 2010, a true and correct copy of the RESPONSE TO REQUEST FOR ORAL ARGUMENT ON REFILED MOTION FOR PRELIMINARY INJUNCTION AGAINST DEFENDANTS HOGAN AND STREUR was served electronically on all parties of record.

/s/ R. Scott Taylor  
Alaska Bar No. 8507110