

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

**LOCAL 7.1(h)(1) NOTICE OF SUPPLEMENTAL AUTHORITY
IN SUPPORT OF 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)(1), Defendants submit this notice that the following opinion, decided by the United States Court of Appeals for the First Circuit

on September 8, 2010, is pertinent to Defendants' Motion To Dismiss for Lack of Subject Matter Jurisdiction Under the False Claims Act's Public Disclosure Bar, 31 U.S.C. § 3730(e)(4)(A) [Dkt. 89]: *United States ex rel. Poteet v. Bahler Med., Inc.*, No. 09-1728, 2010 WL 3491159, at *9 (1st Cir. Sept. 8, 2010) (attached hereto as Exhibit A).

In particular, Defendants draw the Court's attention to the opinion's section III.A.3., which interprets "based upon" under the FCA's public disclosure bar. Specifically, that section's last paragraph states:

The only notable differences between the two allegations [in the public document and the present case] is that the allegation in this case identifies a specific Medtronic device (INFUSE) and describes in greater detail how the defendant doctors improperly influenced the third-party doctors (they falsely told them that off-label use of INFUSE was eligible for Medicare reimbursement). Although these details undoubtedly add some color to the allegation, the allegation ultimately targets the same fraudulent scheme. That is enough to trigger the public disclosure bar. *See Ondis*, 587 F.3d at 58; *see also Dingle v. Bioport Corp.*, 388 F.3d 209, 215 (6th Cir. 2004) (noting that a contrary ruling "would allow potential *qui tam* plaintiff's [sic] to avoid the public disclosure bar by pleading their complaints with more and more detailed factual allegations already publicly disclosed").

Poteet, 2010 WL 3491159, at *9. The First Circuit's holding with respect to the public disclosure bar's "based upon" standard is pertinent to Defendants' description of how PsychRights's action is based upon previous public disclosures.¹

¹ *See, e.g.*, Dkt. 91 at 12-15; Dkt. 119 at 3, 8-14.

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
Email: 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

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. 4th Avenue, Suite 600
Anchorage, AK 99501
Telephone: (907) 257-7853
Fax: (907) 276-4152
Email: 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

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

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: clamanm@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: jertorgerson@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
Email: 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
Email: myra@sonoskyjuneau.com

Kay Gouwens
Alaska Bar No. 8106023
900 West 5th Avenue, Suite 700
Anchorage, AK 99501
Telephone: (907) 258-6377
Fax: (907) 272-8332
Email: 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
Email: 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

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
Email: 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
Email: 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

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

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