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Attorney for Plaintiffs

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA	)	Case No. 3:09-cv-0080-TMB
ex rel. Law Project for Psychiatric	)	
Rights,	)	
	)	<i>UNDER SEAL</i>
Plaintiffs,	)	
	)	
vs.	)	
	)	
Osami H. Matsutani, et al.	)	
	)	
Defendant.	)	
	)	

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**MEMORANDUM IN SUPPORT OF UNITED STATES'  
APPLICATION FOR AN EXTENSION OF TIME**

The United States respectfully asks that this court extend the seal and intervention period in the captioned *qui tam* action through January 4, 2010, so

that the United States can continue its investigation of relator's allegations in the above-captioned qui tam case.

### **BACKGROUND**

The relator filed its complaint in this case and served it and a disclosure of material evidence on the Attorney General on May 4, 2009. The relator's complaint alleges that Defendants violated the False Claims Act *inter alia* by: knowingly filing claims for payments under federal healthcare statutes and regulations for reimbursement for claims for which they were not entitled.

No previous extension has been requested. 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.

### **ARGUMENT**

This is an action under the qui tam provisions of the False Claims Act, 31 U.S.C. § 3729 et seq. (FCA), that permit a private party (the "relator") to bring suit to recover damages allegedly suffered by the United States due to fraud.

Under the FCA, the action remains under seal for at least 60 days during

which the United States may elect to intervene and assume primary responsibility for prosecuting the case. The FCA provides:

(2) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the Government pursuant to Rule 4(d)(4) of the Federal Rules of Civil Procedure. The complaint shall be filed in camera, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders. 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.

31 U.S.C. § 3730(b)(2) (emphasis added).

The 60-day period may be extended upon application of the United States for good cause shown. The legislative history of the FCA's *qui tam* provisions makes clear that the sealing provisions are primarily for the benefit of the United States. A *qui tam* complaint is kept under seal to allow the United States to pursue its inquiries into the relator's allegations, fully evaluate the evidence, and determine whether to intervene:

Keeping the qui tam complaint under seal . . . is intended to allow the Government an adequate opportunity to fully evaluate the private enforcement suit and determine both if that suit involves matters the Government is already investigating and whether it is in the Government's interest to intervene and take over the civil action.

S. Rep. No. 99-345, 99th Cong. 2nd Sess. 24 (1986), reprinted in 1986 U.S. Code Cong. & Admin. News 5266, 5289. The legislative history also notes that the seal allows the United States "an opportunity to study and evaluate" fraud allegations.

Id.

The FCA contemplates that the government should be allowed sufficient time to review and investigate a relator's allegations in order to determine whether to intervene and devote its resources to prosecution of the action. The FCA provides: "[t]he Government may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal." 31 U.S.C. § 3730(b)(3) (emphasis added).

Thus, the FCA provides for one or more extensions of time to allow the government to complete its evaluation of the allegations contained in a qui tam complaint and to reach an informed decision on whether or not to enter its appearance in the case. The only requirement is that the government show good cause for the extensions.

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]

[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.

The United States also requests that the Court order the complaint and other filings to remain under seal during the requested extension as provided for in the FCA itself. See 31 U.S.C. § 3730(b)(3).

### CONCLUSION

For the above reasons, the United States respectfully requests that the Court grant its application for an extension of time up to and including January 4, 2010, during which time the complaint and all other documents filed in this matter remain under seal, and during which period the United States may continue its investigation of the relator's allegations in order to determine whether to intervene in the action.

RESPECTFULLY SUBMITTED this 1<sup>st</sup> day of July, 2009, in Anchorage,  
Alaska.

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 1, 2009,  
a copy of the foregoing **MEMORANDUM IN SUPPORT  
OF UNITED STATES' APPLICATION FOR AN  
EXTENSION OF TIME** was served via U.S. Mail on:

James B. Gottstein, Esq.  
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s/ Richard Pomeroy