

**MINUTES OF THE UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA**

UNITED STATES OF AMERICA ex rel. Law Project for Psychiatric Rights

v.

OSAMU H. MATSUTANI, et al.,

Case No. 3:09-cv-080-TMB

By: THE HONORABLE TIMOTHY M. BURGESS

PROCEEDINGS: ORDER FROM CHAMBERS

On September 24, 2010, this Court granted Defendants' motion to dismiss for lack of subject matter jurisdiction¹ and subsequently entered a judgment dismissing the action.² Relators have appealed.³ Certain Defendants now move for attorneys' fees and expenses under the False Claims Act ("FCA") against Relator Law Project for Psychiatric Rights.⁴ The FCA provides that a prevailing defendant may recover fees and expenses if "the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for the purposes of harassment."⁵

The Court does not agree with Defendants that this case was "clearly frivolous." As the Court noted in its Order granting Defendants' motion to dismiss, there is "no consensus" as to whether "industry-wide allegations of fraud are sufficient to invoke the Public Disclosure Bar."⁶ Relators' argument that their allegations were not disclosed because the prior disclosures did not name specific defendants was not "wholly without merit."⁷

¹ Dkt. 163.

² Dkt. 166.

³ Dkt. 167.

⁴ Dkt. 173. This Court retains jurisdiction to decide a motion for attorneys' fees pending Relators' appeal. *See Cazares v. Barber*, 959 F.2d 753, 755-56 (9th Cir. 1992) .

⁵ 31 U.S.C. § 3730(d)(4).

⁶ Dkt. 163 at 19.

⁷ *Pfingston v. Ronan Eng'g Co.*, 284 F.3d 999, 1006 (9th Cir. 2002); *cf. United States ex rel. Fine v. MK-Ferguson Co.*, 99 F.3d 1538, 1549 (10th Cir. 1996) (upholding denial of attorney's fees where the fact that the district court lacked subject matter jurisdiction "was not

Nor can the Court conclude on this record that Relators actions were “clearly vexatious” or brought “primarily for the purposes of harassment.” The fact that the Relators’ primary interest in bringing the actions was not to financially benefit themselves does not change that conclusion. Relators primary interest was in stopping the allegedly fraudulent practices, not harassing or annoying Defendants.

The Court has reviewed Defendants’ remaining arguments and finds them to be without merit. This case does not represent a “rare and special circumstance”⁸ where attorneys’ fees are warranted under the FCA.

Defendants’ motion for attorneys’ fees and costs (Docket No. 173) is DENIED.

IT IS HEREBY ORDERED.

Entered at the direction of the Honorable Timothy M. Burgess, United States District Judge.

DATED: December 7, 2010

clearly apparent” under the precedent of the circuit at that time).

⁸ *Pfingston*, 284 F.3d at 1006-07.