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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

[PROPOSED] ORDER DISMISSING
THE COMPLAINT PURSUANT TO RULE 9(B)

LAW OFFICES OF
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This matter has come before the Court on a motion of all defendants to dismiss the complaint in its entirety for failure to comply with Federal Rule of Civil Procedure 9(b).

Plaintiff, Law Project for Psychiatric Rights (“PsychRights”), is an Alaska non-profit public interest law firm whose stated “mission” is “to mount a strategic litigation campaign in the United States against psychiatric drugging and electroshocking people against their will.” [Complaint, Para. 9] PsychRights has filed a lengthy complaint under the False Claims Act (FCA) against an array of Alaska hospitals, psychiatrists, community mental health centers, state officials, national pharmacy retailers, and a pharmaceutical data publisher (collectively, “Defendants”).

The complaint details what PsychRights contends is a vast conspiracy by unidentified members of the pharmaceutical manufacturing industry— a group noticeably absent from the long list of defendants—to (i) obtain unjustified FDA approval for unidentified psychiatric medications, (ii) improperly influence unidentified prescribers to prescribe these drugs to, or misdiagnose, unidentified patients, and (iii) encourage the use of such medicines for unspecified non-approved (“off-label”) purposes. The complaint also alleges that psychiatric medications are not sufficiently studied in children, should not be used in children, and are over-used in children.

However, the complaint contains no specific allegation that any Defendant was engaging in those activities or explanation why the alleged facts are relevant to an FCA claim against the Defendants. The complaint also does not identify specifically any claims submitted, or caused to be submitted, by any of the Defendants, despite its central

allegation that the Defendants violated the FCA by submitting, or causing to be submitted, false claims for non-reimbursable, off-label psychiatric drugs. Indeed, the complaint is entirely devoid of specification as to the time, place, or manner of any alleged fraud or false claim submission by or on behalf of any of the Defendants.

It is settled law that Rule 9(b) applies to FCA allegations.¹ The Ninth Circuit has held that, in order to satisfy Rule 9(b), allegations of fraud must be “specific enough to give defendants notice of the particular misconduct which is alleged to constitute the fraud charged so that they can defend against the charge and not just deny that they have done anything wrong.”²

Because the complaint contains no particularized allegations of fraud against the Defendants as required by Federal Rule of Civil Procedure 9(b), it is hereby ordered that Defendants’ Motion is GRANTED. It is further ordered that this dismissal shall be with prejudice. It is undisputed that PsychRights is a public interest law firm rather than an insider or whistleblower with actual information about any of the Defendants and their connection to the submission of claims to the government. Given this reality, and the representations PsychRights has already made to the Defendants in its Rule 26(f) submission and to the government regarding its limited knowledge of Defendants’

¹ See *United States ex rel. Bly-Magee v. California*, 236 F.3d 1014, 1018 (9th Cir. 2001).

² *Neubronner v. Milken*, 6 F.3d 666, 672 (9th Cir. 1993) (emphasis added).

operations, it is clear that PsychRights has no additional facts to support its fraud claim. Therefore, amendment of the complaint would be futile.³

Accordingly, for the reasons set forth above and in the defendants' briefing, the complaint is hereby dismissed with prejudiced.

DATED this ____ day of _____, 2010.

TIMOTHY M. BURGESS
U.S. DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on March 30, 2010,
a true and correct copy of the [Proposed]
Order Dismissing the Complaint
Pursuant to Rule 9(b) was served electronically
on all parties of record.

s/Cheryl Mandala

8848.006/271965

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³ Fed. R. Civ. P. 15(a); *Eminence Capital v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003) (leave to amend should be granted unless complaint cannot be saved by amendment). *See also United States ex rel Gale v. Raytheon Co.*, 2009 WL 3378976 (S.D. Cal. Oct. 19, 2009) (FCA complaint dismissed with prejudice based upon futility of amendment under Rule 9(b)); *United States ex rel. Phipps v. Comprehensive Comm. Dev. Corp.*, 152 F. Supp. 2d 443, 455 (S.D.N.Y. 2001) (dismissing with prejudice in part because relator “has not proffered any evidence to suggest that she could even cure the Rule 9(b) deficiencies in her complaint”).