



1 Defendants Providence Health & Services, Osamu Matsutani, M.D., Anchorage  
2 Community Mental Health Services, Lucy Curtiss, M.D. and Sheila Clark, M.D. (collectively  
3 “Defendants”) file this memorandum regarding the other Defendants’ motions to dismiss for  
4 failure to state a claim and for lack of subject matter jurisdiction (Docs. 89, 92 & 94). These  
5 Defendants file this memorandum to request that the Court decide the Defendants’ Motion to  
6 Dismiss under Federal Rule of Civil Procedure 9(b) (Doc. 83) before reaching the issues  
7 contained in the Rule 12(b) motions.  
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9 On March 30, 2010, all of the Defendants in this case filed a joint motion to dismiss  
10 the complaint of relator Law Project for Psychiatric Rights (“PsychRights”) on the basis that  
11 it fails to state any particulars of the fraud alleged against the Defendants as required by  
12 Rule 9(b). As set forth in Defendants’ memorandum in support of their 9(b) motion, the  
13 complaint is subject to dismissal because it is entirely devoid of specification as to the time,  
14 place, or manner of any alleged fraud or false claim submission by or on behalf of any of the  
15 Defendants. Indeed, very little is alleged about the Defendants in the Complaint, other than  
16 conclusory, boiler-plate recitations of False Claims Act liability requirements. Such  
17 allegations are plainly deficient under Rule 9(b). *See, e.g., United States ex rel. Bly-Magee v.*  
18 *California*, 236 F.3d 1014, 1018–19 (9th Cir. 2001). As such, the Defendants are left in a  
19 position to speculate as to the scope and nature of the alleged fraud if indeed there is anything  
20 more to this complaint than has already been pled.  
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23 One of the purposes of Rule 9(b) is to ensure that a party bringing a fraud claim  
24 provides enough detail of the alleged fraud to enable the defendant to defend against the  
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1 charge. *Neubronner v. Milken*, 6 F.3d 666, 672 (9th Cir. 1993) (allegations of fraud must be  
2 “specific enough to give defendants notice of the particular misconduct which is alleged to  
3 constitute the fraud charged so that they can defend against the charge and not just deny that  
4 they have done anything wrong.”) (emphasis added). This salutary purpose of Rule 9(b) is  
5 brought sharply into focus here, where the lack of particularity in PsychRights’s complaint  
6 forces the Defendants to guess as to the parameters of what is being alleged against each of  
7 them.

9 As such, the undersigned Defendants believe that a challenge to the legal sufficiency  
10 of PsychRights’s allegations under Rule 12(b)(6) should not be considered unless and until  
11 PsychRights demonstrates that it can properly and fully articulate under basic pleading rules  
12 what those allegations are, such that the Defendants are not merely guessing as to its theories  
13 of liability.

15 Similarly, with regard to the 12(b)(1) motion to dismiss for lack of subject matter  
16 jurisdiction, as all Defendants noted in footnote 43 of their Rule 9(b) memorandum, “[t]he  
17 vagueness of the complaint and the fact that it derives much or perhaps all of its allegations  
18 from publicly-available information makes it extremely difficult for the Court to satisfy itself  
19 that it even has subject matter jurisdiction under the FCA’s ‘public disclosure’ bar.”  
20 [Doc. 84, at 18 n.43].

22 Requiring PsychRights to first satisfy basic pleading requirements before deciding  
23 other dispositive motions will promote efficiency and judicial economy. If the Court  
24 dismisses PsychRights’s complaint with prejudice for failure to satisfy Rule 9(b), or if  
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26 MEMORANDUM OF DEFENDANTS PROVIDENCE HEALTH & SERVICES, OSAMU  
MATSUTANI, M.D., ANCHORAGE COMMUNITY MENTAL HEALTH SERVICES, LUCY  
CURTISS, M.D. & SHEILA CLARK, M.D. IN SUPPORT OF MOTIONS TO DISMISS UNDER  
RULE 12(b)(6) AND FOR LACK OF SUBJECT MATTER JURISDICTION

*Law Project for Psychiatric Rights v. Matsutani, et al.*, Case No. 3:09-cv-00080-TMB  
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1 PsychRights still cannot satisfy Rule 9(b) after an opportunity to amend, there will be no need  
2 for the Court to consider more complex public disclosure bar and Rule 12(b)(6) arguments,  
3 however well-founded.<sup>1</sup> Conversely, if PsychRights is somehow able to articulate its fraud  
4 allegations with the requisite specificity under Rule 9(b) (an outcome that seems impossible  
5 given its distant relationship to the alleged fraud), then the Court and the Defendants will have  
6 the benefit of allegations susceptible to full and certain analysis rather than speculation.  
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8 The undersigned Defendants agree with the substance of the arguments advanced by  
9 the other Defendants in this case—*i.e.*, that based upon the sparse allegations in the complaint,  
10 the Court lacks subject matter jurisdiction over publicly-disclosed allegations of fraud where  
11 PsychRights is not the original source of the information, and that the allegations in the  
12 complaint do not appear to state a claim upon which relief can be granted. Given the patent  
13 inadequacies of the allegations, though, these Defendants submit that the Court should first  
14 hold PsychRights to basic pleading requirements before entertaining motions whose final  
15 disposition would be facilitated by a coherent, procedurally adequate complaint.  
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18 <sup>1</sup> First ruling on the sufficiency of pleadings is appropriate when those pleadings inform  
19 jurisdictional arguments. *See, e.g., United States ex rel. Ondis v. City of Woonsocket, R.I.*,  
20 2008 WL 282274, \*2 (D.R.I. Jan. 31, 2008) (“Ordinarily, the Court would address the issue of  
21 subject matter jurisdiction before addressing other grounds for dismissal. However, in this  
22 case, it would be impossible to decide the jurisdictional question of whether Ondis should be  
23 credited with discovering the allegedly false statements unless the complaint coherently  
24 alleges the relevant facts and specifies the statements alleged to have been false.”) (emphasis  
25 added). *See also United States ex rel. Gagne v. City of Worcester*, No. 06-40241-FDS, 2008  
26 WL 2510143, \*4 (D. Mass. June 20, 2008) (dismissing the complaint under Rule 9(b) and  
noting: “[u]ltimately, the Court is unable to make the FCA jurisdictional determination on the  
present record. Although ordinarily the Court must address the issue of subject matter

1 For the above-stated reasons, the undersigned Defendants request that the Court first  
2 address PsychRights's Rule 9(b) failings and order dismissal on that basis before reaching the  
3 other motions.

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5 Respectfully submitted this 9th day of April, 2010.

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jurisdiction first, it may nonetheless evaluate the sufficiency of the pleadings where those issues are intertwined with the jurisdictional analysis.”).

MEMORANDUM OF DEFENDANTS PROVIDENCE HEALTH & SERVICES, OSAMU MATSUTANI, M.D., ANCHORAGE COMMUNITY MENTAL HEALTH SERVICES, LUCY CURTISS, M.D. & SHEILA CLARK, M.D. IN SUPPORT OF MOTIONS TO DISMISS UNDER RULE 12(b)(6) AND FOR LACK OF SUBJECT MATTER JURISDICTION

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Certificate of Service

I hereby certify that on April 9, 2010, a copy of  
this Memorandum of Defendants Providence  
Health & Services, Osamu Matsutani, M.D.,  
Anchorage Community Mental Health Services,  
Lucy Curtiss, M.D. and Sheila Clark, M.D. in  
Support of Motions to Dismiss Under Rule  
12(b)(6) and for Lack of Subject Matter  
Jurisdiction was electronically served on all

MEMORANDUM OF DEFENDANTS PROVIDENCE HEALTH & SERVICES, OSAMU  
MATSUTANI, M.D., ANCHORAGE COMMUNITY MENTAL HEALTH SERVICES, LUCY  
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1 parties of record by electronic means through the  
2 ECF system as indicated on the Notice of  
3 Electronic Filing, or if not confirmed by ECF, by  
4 first class regular mail as follows:

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