

JAMES B. GOTTSTEIN, ABA # 7811100  
LAW PROJECT FOR PSYCHIATRIC RIGHTS, INC.  
406 G Street, Suite 206  
Anchorage, Alaska 99501  
Tel: (907) 274-7686  
Fax: (907) 274-9493  
jim.gottstein@psychrights.org

Attorney for Law Project for Psychiatric Rights  
And Daniel I. Griffin

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA *ex rel.*  
Law Project for Psychiatric Rights, an  
Alaskan non-profit corporation, and Daniel I.  
Griffin,

Plaintiffs-Appellants,

vs.

OSAMU H. MATSUTANI, MD, *et al.*,

Defendants-Appellees.

No. 10-35887

D.C. Nos. 3:09-cv-00080-TMB,  
3:09-cv-00246-TMB  
U.S. District Court for Alaska,  
Anchorage

**REQUEST FOR  
JUDICIAL NOTICE  
BY LAW PROJECT FOR  
PSYCHIATRIC RIGHTS  
AND DANIEL GRIFFIN**

Plaintiffs-Appellants United States of America *ex rel* Law Project for Psychiatric Rights (PsychRights®) and Daniel Griffin hereby request (move) this Court take judicial notice of the United States' *Amicus* Brief in *United States ex rel. Baltazar v. Warden*, Case No. 09-2167, United States Court of Appeals for the Seventh Circuit (Request for Judicial Notice).<sup>1</sup> A copy of the *Amicus* Brief is attached to this Request for Judicial Notice.

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<sup>1</sup> Pursuant to ¶(7) of Circuit Advisory Committee Note to Rule 27-1, counsel for Defendants-Appellees were sent an e-mail asking for their position on taking such

"This Court may take notice of proceedings of other courts, both within and without the federal judicial system, if those proceedings have a direct relation to matters at issue."<sup>2</sup>

The primary, if not exclusive, matter at issue in this appeal is whether the District Court was correct when it concluded that public disclosure of industry-wide allegations of fraud trigger what is known as the "Public Disclosure Bar" under 31 U.S.C. 3730(e)(4)(A).<sup>3</sup> This precise issue is currently under consideration in the Seventh Circuit in the *Baltazar* case and the United States has filed the *amicus* brief therein for which judicial notice is sought here.

Because Plaintiffs-Appellants are *qui tam relators*, this action is brought on behalf of the United States, which is the real party in interest.<sup>4</sup> Even when, as here, the United States declines to intervene in False Claims Act cases and the case proceeds *qui tam*, the United States still has its interest in the outcome of such cases. Thus, in the *Baltazar* case, the United States filed the *amicus* brief because of its interest in preventing the Seventh Circuit from upholding the decision of the lower court there that public disclosure of industry-wide fraud triggers the Public Disclosure Bar.

This is directly related to the matter at issue here and therefore a proper subject of judicial notice. For these reasons, Plaintiffs-Appellants PsychRights and

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judicial notice and advised this motion could be filed as early as today. No response has been received as of the filing hereof, but it is expected this motion will be opposed.

<sup>2</sup> *In re Heritage Bond Litigation*, 546 F.3d 667, 670 (9th Cir. 2008), citing to *U.S. ex rel. Robinson Rancheria Citizens Council v. Borneo*, 971 F. 2d 244, 248 ( 9th Cir. 1992).

<sup>3</sup> Dkt. No. 163, pp18-19.

<sup>4</sup> *Cedars-Sinai Medical Center v. Shalala*, 125 F.3d 765, 768 (9th Cir. 1997); *U.S. ex rel. Hyatt v. Northrop Corp.*, 91 F.3d 1211, n.8 (9th Cir. 1996); *U.S. ex rel. Killingsworth v. Northrop Corp.*, 25 F.3d 715, 720 (9th Cir. 1994).

Griffin request the court take judicial notice of the United States' *Amicus* Brief in *United States ex rel. Baltazar v. Warden*, Case No. 09-2167, in the United States Court of Appeals for the Seventh Circuit, a copy of which is attached hereto.

RESPECTFULLY SUBMITTED this 21st day of December, 2010

Law Project for Psychiatric Rights, an Alaskan  
non-profit corporation and Daniel I. Griffin,  
Plaintiffs-Appellants

By: /s/ James B. Gottstein

James B. Gottstein  
Alaska Bar No. 7811100  
406 G Street, Suite 206  
Anchorage, Alaska 99501  
Tel: (907 274-7686  
Fax: (907 274-9493  
E-mail: jim.gottstein@psychrights.org

## CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on December 21, 2010. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system. I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid to the following non-CM/ECF participants:

Carolyn Heyman-Layne  
Sedor Wendlandt Evans & Filippi,  
LLC  
Suite 500  
500 L Street  
Anchorage, AK 99501

Howard A. Lazar  
DELANEY WILES, INC.  
Suite 400  
1007 West Third Avenue  
Anchorage, AK 99501-1936

John J. Tiemessen  
Clapp, Peterson, Van Flein,  
Tiemessen & Thorsness, LLC  
411 Fourth Avenue  
Suite 300  
Fairbanks, AK 99701-4711

Kay E. Maassen Gouwens  
SONOSKY & CHAMBERS  
Suite 700  
900 W. 5th Avenue  
Anchorage, AK 99501

Thomas J. Cahill  
SATTERLEE, STEPHENS, BURKE  
& BURKE  
Suite 1130  
230 Park Avenue  
New York, NY 10169-0079

Vance A. Sanders  
P.O. Box 240090  
Douglas, AK 99824

/s/ James B. Gottstein  
JAMES B. GOTTSTEIN