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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

REPLY RE: REQUEST FOR JUDICIAL NOTICE
(DktEntry: 10, 24)

At DktEntry 24, the defendants-appellees (Defendants) oppose the request (motion) at DktEntry 20 by the Law Project for Psychiatric Rights (PsychRights[®]) and Griffin that this Court take judicial notice of 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 (U.S. *Amicus* Brief). The Defendants assert this

Court should not take such judicial notice because the Law Project for Psychiatric Rights (PsychRights[®]) and Griffin did not present the U.S. *Amicus* Brief to the district court and it addresses facts unrelated to the present case. At footnote 1, they also argue PsychRights and Griffin do not explain why they don't have the U.S. file an *amicus* brief in this case.

The reason PsychRights and Griffin did not present the U.S. *Amicus* Brief to the district court is because they were unaware of it until after the final judgment in this case. With respect to Griffin and PsychRights not "having the United States, a purported party to this case, file an *amicus* brief in this appeal," as argued by the Defendants in footnote 1, the United States may or may not file an *amicus* brief, but whether they do or not is beyond Griffin's and PsychRights' control.

In the absence of the U.S. filing such a brief, as stated in the Request for Judicial Notice, it seems this Court should be aware of the government's position on the same issue -- whether industry-wide fraud triggers what is known as the "Public Disclosure Bar," in 31 U.S.C. § 3730(e)(4)(A). There is certainly no reasonable dispute that the U.S. *Amicus* Brief presents the government's position on the issue in the *Baltazar* case. Judicial notice has been requested only for that purpose -- making the government's position on the issue known to this Court, as expressed in *Baltazar*, of whether the Public Disclosure Bar is triggered by

allegations of industry-wide fraud. This is exactly the same issue here, although, of course, the facts of the *Baltazar* case are different.

RESPECTFULLY SUBMITTED this 10th day of January, 2011

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

By: /s/ James B. Gottstein

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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 January 10th, 2011. 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:

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