Honorable James L. Robart

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

UNITED STATES OF AMERICA ex rel. RAJU A.T. DAHLSTROM, and STATE OF WASHINGTON, ex rel. RAJU A.T. DAHLSTROM, Plaintiffs, vs. SAUK-SUIATTLE INDIAN TRIBE of WASHINGTON, RONDA KAY METCALF, CHRISTINE MARIE JODY MORLOCK, ROBERT LARRY MORLOCK, and COMMUNITY NATURAL MEDICINE, PLLC, Defendants.	NO. 2:16-cv-00052-JLR PLAINTIFF RELATOR RAJU A.T. DAHLSTROM'S RESPONSE TO DEFENDANT SAUK-SUIATTLE INDIAN TRIBE'S MOTION TO DISMISS UNDER RULE 12(b)(6) Note on Motion Calendar: Thursday, February 16, 2017 (should have been for a Friday)

COMES NOW Plaintiff Relator Raju A.T. Dahlstrom, by through his counsel, Richard L. Pope, Jr., and hereby submits this Response to Defendant Sauk-Suiattle Indian Tribe's (SSIT) Motion to Dismiss under Rule 12(b)(6) (Dkt. # 13) and Request for Sanctions (Dkt. # 14)

Introduction

On January 12, 2017, Defendant Sauk-Suiattle Indian Tribe, et al., filed two motions: (1) a motion to dismiss complaint (Dkt # 13, Dated: 1/12/17) and a (frivolous) "Supplemental Motion to Dismiss Complaint and Motion for Imposition of Sanctions and Award for Attorney's Fees." (Dkt # 14., Dated: 1/13/17) against Defendants: Ronda Metcalf, Christine Morlock, Robert Morlock and a business corporation Community Natural Medicine which

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they own. CNM has no connection with the Sauk-Suiattle Tribe, other than profiting from federally funded vaccines which Dr. Morlock diverted from the tribal health clinic for use in her own private business. Plaintiff opposes both of Defendants' motions.

Concur with Most Arguments Made in United States of America "Statement of Interest"

Plaintiff United States of America has recently filed a well-written brief on the False Claims Act and its application to Indian tribes. (Dkt. 24, 25-1) Plaintiff Relator Dahlstrom agrees with the United States analysis in Section III (Dkt. 25-1, at 8-9) that individuals are subject to FCA claims for actions taken either in the course of their official duties (or in the pursuit of private gain). To reiterate the points made by the United States in its brief:

> In Stoner v. Santa Clara County Office of Education, the Ninth Circuit held "that state employees may be sued in their individual capacities under the FCA" even "for actions taken in the course of their official duties." 502 F.3d 1116, 1125 (9th Cir. 2007). Accordingly, employees of sovereign entities sued in their individual capacity are nevertheless "persons" within the meaning of the FCA, even in qui tam actions. *Id.* Such a suit "does not implicate the principles of state sovereignty protected by Stevens and our Eleventh Amendment jurisprudence because such an action seeks damages from the individual defendants rather than the state treasury." *Id.* State employees may be sued in their individual capacities even if the "State may choose to indemnify the employees for any judgment rendered against them." *Id.* As stated in Stoner, in order to state a claim against state employees in their personal capacities, relators need only plead that the state officials violated the FCA, and do not have to allege that the individual defendants "personally profited from such submissions." *Id.* at 1124. (Dkt. 25-1, at 8)

In United States v. Menominee Tribal Enters., 601 F. Supp. 2d 1061, 1069-71 (E.D. Wis. 2009), the District Court followed the Ninth Circuit's holding in Stoner, and ruled that tribal official and employees could be held personally liable under the False Claims Act for frauds committed against the United States during the course of their official employment.

The United States is correct – there has never been a published decision by any Circuit Court of Appeal as to whether or not an Indian tribe is a "person" who may be sued under 31 U.S.C. § 3729(a). The only District Court decision published by West is the Menominee decision above, which held the United States could not sue an Indian tribe under the FCA. That case did not make it to the Seventh Circuit, since the United States lost at trial on the merits against the tribal officials, therefore making an appeal against the tribe itself pointless.

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Defendant Sauk-Suiattle does not conduct any legal or factual analysis of whether the individual defendants are being sued in their individual or official capacities, but simply makes a conclusory allegation that – if the Tribe is not liable, then no one can be liable.

Here, all of the individual defendants are being sued in their individual capacities. They have either performed fraudulent acts in the course of their employments and/or committed frauds or thefts for their own personal gain. Both Ronda Metcalf and Christine Morlock are accused of committing fraud in the course of their employment to benefit the Tribe and/or themselves personally, and diverting federal provided resources for their own personal use. Robert Morlock was not even an employee of the Tribe, and is accused of diverting federally funded vaccines for the use of the private business co-owned with his wife.

Community Natural Medicine PLLC is NOT any sort of "tribal enterprise". It is a Washington business entity, owned by Christine and Robert Morlock (non-Indians), which is engaged in naturopathy practice to the general public in Arlington, Washington. CNM is accused of diverting federally funded vaccines from the Tribe to use in its private business.

I. FACTUAL BACKGROUND

A. Sauk-Suiattle Indian Tribe – Health and Social Services Programs

The Defendant, Sauk-Suiattle Indian Tribe ("SSIT") is a federally-recognized Indian Tribe located in Darrington, Washington and operates on its reservation a tribal health clinic and other social services programs and advances its goal as follows:

> "Sauk-Suiattle Indian Tribe Health and Social Services Department is to provide health care, social services, drug and alcohol prevention, aftercare rehabilitation, and alcohol counseling to children, youth, adults, and elders of the community in a manner that reflects cultural beliefs…The active health clinic user population is 175. The leading causes of death are heart disease, malignant neoplasm, cirrhosis of the liver, accidents other than motor vehicle, and cerebrovascular disease. There were 65 Active users in 2002."[1]

B. Sauk-Suiattle Indian Tribe –Self Determination Contracts

[1] See Northwest Portland Area Indian Health Board website introducing the Sauk-Suiattle Indian Tribe's health care services at: http://www.npaihb.org/member-tribes/sauk-suiattle-tribe/.

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Congress enacted the Indian Self-Determination and Education Assistance Act (ISDA), Pub. L. 93–638, 88 Stat. 2203, 25 U. S. C. §450 et seq., in 1975 to help Indian tribes assume responsibility for aid programs that benefit their members. Under the ISDA, tribes may enter "self-determination contracts" with federal agencies to take control of a variety of federally funded programs. §450f. A contracting tribe is eligible to receive the amount of money that the Government would have otherwise spent on the program, see §450j–1(a)(1), as well as reimbursement for reasonable "contract support costs," which include administrative and overhead costs associated with carrying out the contracted programs, §§450j–1(a)(2), (3), (5).

In 1988, Congress amended the ISDA to apply the Contract Disputes Act of 1978 (CDA), 41 U. S. C. §7101 et seq., to disputes arising under the ISDA. See 25 U. S. C. §450m–1(d); Indian Self-Determination and Education Assistance Act Amendments of 1988, §206(2), 102 Stat. 2295. As part of its mandatory administrative process for resolving contract disputes, the CDA requires contractors to present "[e]ach claim" they may have to a contracting officer for decision. 41 U. S. C. §7103(a)(1). Congress later amended the CDA to include a 6-year statute of limitations for presentment of each claim. Federal Acquisition Streamlining Act of 1994, 41 U. S. C. §7103(a)(4)(A).

On or about Fiscal Year 2014 Defendant Sauk-Suiattle Indian Tribe entered an Annual Funding Agreement (AFA) with the United States of America, Department of Health and Human Services, Indian Health Services for $**11,640,748**, which reflects the Defendant's share of ISDA-funding. In accepting this funding, the SSIT stipulated that it would use such funding for legal purposes. This, however, is not the case.

C. Sauk-Suiattle Indian Tribe – One of 567 Federally Recognized Tribes

"Today, self-governance compacting affords Tribes the most flexibility to tailor health care services to the needs of their communities. Tribes overwhelming agree that having the ability to create a comprehensive approach to health services is the greatest benefit of the Tribal Self-Governance Program. Other benefits include improved communication between tribal programs; partnerships with state and local governments to provide services; innovative health

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programs; establishment of the Tribal Self-Governance Advisory Committee; and creation of the Office of Tribal Self-Governance to serve as a federal-tribal liaison, offer technical assistance to Tribes, coordinate and lead policy discussions, and provide access to the IHS Director. Program success is demonstrated by the increasing number of Tribes choosing to participate. As of July 2016, the IHS and Tribes have negotiated 90 self-governance compacts that are funded through 115 funding agreements with over 350 (or 60 percent) of the 567 federally recognized Tribes. This program constitutes approximately $1.8 billion (or nearly 40 percent) of the IHS budget."[2]

For Federal Fiscal Year 2016, President Obama's Indian Health Services' overall budget for the Program Level Funding was at: $**6,392,367,000**[3] versus the Sauk-Suiattle Indian Tribe's funding for fiscal year 2013 were approximately $11,000,000. Also of relevance per Defendants' legal counsel, Jack Fiander in December 2016, only 47 of 101 eligible voters in this very small tribe voted in their Tribal Council elections.[4]

D. Affordable Care Act

The Patient Protection and Affordable Care Act, Public Law 111–148, as amended by the Health Care and Education Reconciliation Act of 2010, Public Law 111–152, collectively known as the Affordable Care Act (ACA), and the Indian Health Care Improvement Act (IHCIA), as amended. This program is authorized under the Snyder Act, codified at 25 U.S.C. § 13, and the Transfer Act, codified at 42 U.S.C. § 2001(a).

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[2] See additional information on the Indian Health Services website at: https://www.ihs.gov/newsroom/factsheets/tribalselfgovernance/.

[3] See Indian Health Services' website at: https://www.ihs.gov/newsroom/includes/themes/newihstheme/display_objects/documents/IHS%20FY%202016%20PB%20Request%20Slides.pdf.

[4] See Sauk-Suiattle Indian Tribe's Elections site at: http://www.sauk-suiattle.com/elections.htm.

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E. The Federal False Claims Act

The False Claims Act, as amended by the Fraud Enforcement and Recovery Act of 2009 (FERA), Pub. L. 111-21, § 4(f), 123 Stat. 1617, 1625 (2009), provides in pertinent part that a person is liable to the United States government for three times the amount of damages the government sustains plus a penalty if the person "knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval." 31 U.S.C. § 3729(a)(1)(A) (2009).

As amended by FERA, the FCA also makes a person liable to the United States government for three times the amount of damages which the government sustains, plus a penalty, if the person "knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim." 31 U.S.C. § 3729(a)(1)(B) (2009).

The FCA, as amended, defines the term "claim" to mean "any request or demand, whether under a contract or otherwise, for money or property and whether or not the United States has title to the money or property, that (i) is presented to an officer, employee, or agent of the United States; or (ii) is made to a contractor, grantee, or other recipient, if the money or property is to be drawn down or used on the Government's behalf or to advance a Government program or interest, and if the United States Government (i) provides or has provided any portion of the money or property requested or demanded; or (ii) will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded…." 31 U.S.C. § 3729(b)(2)(A) (2009).

The FCA defines the terms "knowing" and "knowingly" to mean that a person, with respect to information: (1) "has actual knowledge of the information;" (2) "acts in deliberate ignorance of the truth or falsity of the information;" or (3) "acts in reckless disregard of the truth or falsity of the information." 31 U.S.C. § 3729(b)(1)(A) (2009). The FCA further provides that "no proof of specific intent to defraud" is required. 31 U.S.C. § 3729(b) (2006); 31 U.S.C. § 3729(b)(1)(B) (2009).

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The Plaintiff alleges that Defendants[5] violated the foregoing provisions of the FCA by seeking payment for "worthless" services; comingling funds, and other cash or in-kind benefits, between the SSIT and CNM and individual defendants, and continued to negotiate financial instruments to take land into trust without proper or legal authority to do so.

F. The Trust Relationship between the United States and Indian Tribes

The trust relationship between the federal government and Indian tribes is rooted in promises made to Indian tribes by the federal government in treaties and reinforced by federal statutes and common law.

The United States Constitution empowers the federal government to negotiate and enter treaties with Indian tribes. *See, e.g.,* U.S. Const., art. I, § 8; U.S. Const., art. 11, § 2; U.S. Const., art. IV, § 3.

Pursuant to this constitutional authority, the federal government entered a series of treaties with Indian tribes. These treaties generally contained promises by Indian tribes for land and peace in exchange for services to the tribes from the United States and created a general trust relationship between the United States and Indian tribes.

The trust relationship that originated in treaties was reinforced early on by federal common law. As early as 1831, and consistently thereafter, the United States Supreme Court has recognized the special duty the federal government assumed in its dealings and agreements with Indians. *See* Cherokee Nation v. Georgia, 30 U.S. 1 (1831); United States v. Mitchell, 463 U.S. 206, 225 (1983) (noting that a principle that "has long dominated the government's dealings with Indians . . . [is] the undisputed existence of a general trust relationship between the United States and the Indian people"); Seminole Nation v. United States, 316 U.S. 286, 296-97 (1942) (recognizing "the distinctive obligation of trust incumbent upon the [federal] Government in its dealings with [Indians]"); *see also* Eric v. Sec'y of U.S. Dep't of Hons. & Urban Dev., 464 F. Supp. 44,46 (D, Alaska 1978) ("The doctrine that the federal government stands in a fiduciary,

[5] See Footnote # 25 of Complaint, Dkt #1, pg. 19)

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relationship to Native Americans has been a part of our common law since the early days of the Republic.").

G. The Federal Government's Trust Duty to Provide Health Care to Indians

In keeping with its general trust responsibility to Indians, for over a century, the United States government has undertaken the specific trust obligation of providing health care to Indians. Felix S. Cohen, Cohen's Handbook of Federal Indian Law § 22.04[1] (2005). The United States has repeatedly reinforced its duty to provide health care for Indians through legislation. For example, the Snyder Act of 1921, 25 U.S.C. § 13, and the IHCIA, 25 U.S.C. § 1601 et seq., expressly provide legislative authority for Congress to appropriate funds specifically for Indian health care. The purposes of these laws are to provide "relief of distress and conservation of health to Indians," 25 U.S.C. § 13, to "eliminat[e] the deficiencies in health status and health resources of all Indian tribes," 25 U.S.C. § 1621(a)(1), "to ensure the highest possible health status for Indians . . . and to provide all resources necessary to affect that policy," 25 U.S.C. § 1602(1), and "to provide the quantity and quality of health services which will permit the health status of Indians to be raised to the highest possible level," 25 U.S.C. § 1601(3).

More recently, in passing the Affordable Care Act, Congress reauthorized and made permanent the federal government's trust responsibility to Indians, In affirming ifs duty to Indian tribes. Congress declared that "it is the policy of this nation in fulfillment of its special trust responsibilities and legal obligations to Indians -[] to ensure the highest possible health status for Indians and urban Indians and to provide all resources necessary to effect that policy[.]" 25 U.S.C. § 103 (2009). President Obama reaffirmed this duty in signing the 2010 bill amendment to the IHCIA, stating that the federal government's "responsibility to provide health services to American Indians . . . derives from the nation-to-nation relationship between the federal and tribal governments." President Barack Obama, Statement by the President on the Reauthorization of the Indian Health Care Improvement Act (Mar. 23, 2010).

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In enacting the Snyder Act, the IHCIA, and the Affordable Care Act, Congress imposed statutory trust duties on the United States to confer upon tribes the right to receive health care services and a duty to protect these rights. Through such legislation, "Congress has unambiguously declared that the federal government has a legal responsibility to provide health care to Indians." White v. Califano, 437 F. Supp. 543, 555 (D.S.D. 1977). Having undertaken responsibility for Indian health care, the United States has a statutory and fiduciary trust obligation to provide such care in a competent manner.

Federal courts have consistently reinforced Congress's recognition of the federal government's responsibility for Indian health care and duty to assure reasonable health care services to Indians. *See, e.g.,* Blue Legs v. U.S. Bureau of Indian Affairs, 867 F.2d 1094, 1100 (8th Cir. 1988) (noting that "[t]he existence of a trust duty between the United States and an Indian or Indian tribe can be inferred from the provisions of a statute, treaty or other agreement, 'reinforced by the undisputed existence of a general trust relationship between the United States and the Indian people'") (citation omitted); McNabb v. Bozuen, 829 F.2d 787, 792 (9th Cir. 1987) (noting that in "reviewing the text of the IHCIA and the relevant legislative history, one is struck by Congress' recognition of federal responsibility for Indian health care").

H. Sauk-Suiattle Indian Tribe's Failure as *Parens Patriae*

The Plaintiff has parens patriae ("parent of the country") standing to bring constitutional claims because the Tribe has virtually abandoned to care for or represent the **REAL** interests of all of its members and raises claims which affect all of its members, but here, the Defendant Sauk-Suiattle Indian Tribe, et al., has failed to protect its own members from dangerous actions of the Defendants and specifically, in the manner that the federally funded VFC program, health and social services programs and other tribal funded programs through the United States of America (and other services or business transactions) is implemented to the detriment of tribal members and others who access their medical services at the SSIT health clinic and is served by Defendant Dr. Morlock. (*See, e.g.,* Miccosulcee Tribe of Indians v. United States, 680 F. Supp. 2d. 1308 (S.D. Fla. 2010); *see also* West Virginia v. Chas. Pfizer & Co., 440 F.2d 1079,1089-90

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(2nd Cir. 1971) (discussing the parens patriae theory of standing without deciding its application to the facts of the case); Assiniboine & Sioux Tribes v.. Montana, 568 F. Supp. 269, 277 (D. Mont. 1983) (discussing the parens patriae doctrine). "When acting solely in a representative capacity, a tribe's standing is based exclusively on the standing of its individual members: the tribe simply raises claims that its members could raise individually, and essentially stands in the same position as they would, had they brought the action collectively." White Mountain Apache Tribe v. Williams, 810 F.2d 844, 865 n. l6 (9th Cir. 1984).

Defendant Sauk-Suiattle Indian Tribe, et al., has violated and continues to violate the right of the members of the SSIT Tribe to receive **equal protection and due process** under law in violation of the Due Process Clause of the Fifth Amendment to the United States Constitution. U.S. Const., amend. V; *see also* Boling v. Sharpe, 347 U.S. 497, 499-500 (1954) (explaining that principles of equal protection apply to the federal government through the Due Process Clause of the Fifth Amendment rather than the Fourteenth Amendment). Defendants has also violated and continues to violate the equal protection and due process rights of the tribally enrolled members (to be free from fraud and failing and dangerous health care) by taking a valuable right without notice and hearing.

The health care services provided to the SSIT tribal members by the United States qualify as an entitlement to a constitutionally protected property interest. *See* Rincon Band of Mission Indians v. Califano, 464 F. Supp. 934, 939 n.6 (N.D. Cal. 1979) (noting that "the benefits at issue here, health care services, are sufficiently similar to welfare benefits ... to qualify as an 'entitlement' to a constitutionally protected 'property interest'").

Failing to provide adequate care to the Tribe's members without a rational basis violates their right to receive due process and equal protection under law. *See, e.g.*, Rincon Band, 464 F. Supp. at 939 (holding that the United States' deprivation of adequate medical care to California Indians violated their "right to equal protection of the law as guaranteed by the due process clause of the Fifth Amendment" because there was "no rational basis to justify defendants' long history of minimal funding of California Indians health service programs").

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Due process requires that the United States (and by extension the Sauk-Suiattle Indian Tribe) provide health care services to members of the Tribe for which they are entitled. Courts have repeatedly recognized substantive due process claims where prisoners or civil communities —for whom the federal government is directly responsible for health care — allege that medical care has fallen below the constitutionally-prescribed level. *See, e.g.,* Butler v. Fletcher, 465 F.3d 340, 345 (8th Cir. 2006) (noting that "[p]retrial detainees and convicted inmates, like all persons in custody have the same right to these basic human needs," including medical care, under the Due Process Clause); Frost v. Agnos, 152 F.3d 1124,1131 (9th Cir. 1998) (reversing summary judgment on 42 U.S.C. § 1983 claim alleging that the county violated pre-trial detainee's substantive due process rights by failing to provide him with accessible shower facilities).

The Defendant Sauk-Suiattle Indian Tribe, et al., its council administration of Indian Health Services' funds (and in-kind resources) and medical services and its provision and operation of the tribal health clinic in a manner that endangers and poses risk of harm to members of the Tribe violates the Equal Protection Clause and Due Process Clause.

For these reasons, the Plaintiff (acting in capacity as parens patriae theory of standing is applicable to this instant ***qui tam*** action and is entitled to a declaratory judgment that the SSIT's administration of the VFC program and other tribal health and social services or other administrative activities violates the Equal Protection Clause and Due Process Clause rights of the Tribe members.

The Plaintiff is also entitled to a mandatory injunction requiring HIS/SSIT to operate in a manner that complies with the Equal Protection Clause and Due Process Clause rights of the Tribe members.[6]

II. Plaintiff Relator's *qui tam* Filing

On January 12, 2016, Plaintiff Raju A.T. Dahlstrom filed a complaint under seal pursuant to the *qui tam* provisions of the False Claims Act ("FCA"), 32 U.S.C. §§ 3729-33 and

[6] See Compl. Dkt No. 1, at 70 (pg. 34). See also Compl. Dkt No. 1, at Footnotes 19 & 34.

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the Washington State Medicaid Fraud and False Claims Act ("MFFCA"), RCW 74.66.005, *et seq.,* the retaliation provision of the federal False Claims Act (31 U.S.C. § 3730(h)), and state Medicaid Fraud and False Claims Act's whistleblower relief, RCW 74.66.090.[7] (Compl. (Dkt. # 1).)[8] The Sauk-Suiattle is a federally recognized Native American tribe in Darrington, Washington. (*Id.* ¶ 31; Tribe Mot. (Dkt. # 4) at 2.) Defendant Community Natural Medicine, PLLC ("CNM") is a health clinic in Arlington, Washington. (*See* Tribe Mot. at 2) The complaint also lists Defendants Christine Marie Jody Morlock, N.D., and Robert Larry Morlock, who are the owners of CNM, as well as Ronda Kay Metcalf,[9] who is Director of the Indian Health Service ("IHS") and the Health Clinic of the Sauk-Suiattle. (*See* Compl. at 2; Tribe Mot. at 2.). Defendant Community Natural Medicine, PLLC is NOT part of the Sauk-Suiattle Indian Tribe, and instead is a private naturopathic enterprise in the community of Arlington, Washington that is owned and operated by Christine Morlock and Robert Morlock.

The Sauk-Suiattle employed Mr. Dahlstrom from 2010 through his termination on December 8, 2015. (Compl. ¶ 30.) The Tribe initially hired Mr. Dahlstrom as a Director of the tribal Indian Child Welfare ("ICW") Department, but in or around April 2015, the Tribe

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[7] These alleged facts reasonably suggest that Defendants knew that Plaintiff was involved in creating internal reports concerning FCA/MFFCA issues, that Plaintiff has approached his employer (Sauk-Suiattle Indian Tribe, Defendants Metcalf and Dr. Morlock, and most importantly filed written reports with the Office of Legal Counsel of the Sauk-Suiattle Indian Tribe) (*See* Compl. Dkt 1, Footnotes: 1 & 2) on these issues, that Plaintiff though that Defendants had been involved waste, fraud, and mismanagement of the VFC program and other financial illegalities; owed reimbursements, that Defendants appreciated that the investigatory matters reasonably could lead to a viable FCA/MFFCA action. Under the facts and assuming *arguendo* that the distinct possibility standard applies, it is easy to conclude that Defendants would have reasonably believed that there was a distinct possibility of litigation under the FCA/MFFCA. *See* **Marbury v. Talladega Coll**., No 1:11-cv-03251-JEO, 2014 WL 234667, at *7-10 (N.D. Ala. Jan. 22, 2014).

[8] Plaintiff is providing notice that he intends to amend his ***qui tam*** complaint to allege additional FCA violations and under Racketeer Influenced and Corrupt Organizations Statute (18 U.S.C. §§ 1961-1968) against all Defendants. Further, Plaintiff intends to also file additional charges under Violent Crimes in Aid of Racketeering Activity (18 U.S.C. § 1959 (i.e., assault resulting in serious bodily injury, from the use of damaged or spoiled vaccines). *See:* **United States ex rel. Lee v. SmithKline Beecham, Inc**., 245 F.3d 1048, 1053-1053 (9th Cir. 2001), allowing for leave to amend an FCA complaint when justice so requires.

[9] Defendant Metcalf (General Manager and a member of the Sauk-Suiattle Tribal Council) temporarily took over both the Indian Child Welfare ("ICW") and Health and Social Services ("HSS"), within the Sauk-Suiattle Indian Tribe during Plaintiff's "administrative home assignment" and "termination".

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promoted him to Director of tribal Health and Social Services ("HSS") Department. (Tribe Mot. at 3.)

Plaintiff Relator alleges that Defendants knowingly presented or caused to be presented false or fraudulent claims to the United States (and by extension, the State of Washington) by: (1) Illegal real estate property transactions (through the use of financial instruments and transfers of properties through various individuals);[10] (2) submission of false Loan Repayment Programs (LRP) applications or letter certifications by Defendant Dr. Morlock (and later perpetuated by her husband, Defendant Robert Larry Morlock -who later assumed the Directorship of Human Resources within the SSIT) through misrepresentation of credentials, resistance to providing "tribal patients" and the like that she was not an "allopathic practitioner" – thus perpetuating this fraud by also insisting that everybody on the reservation address her by the moniker "Doctor" resulting in significant confusion amongst tribal patients and others receiving their health services at the tribal health clinic. (3) Defendants Sauk-Suiattle Indian Tribe, Defendant Metcalf, and Defendant Dr. Morlock submitted false certification(s) annually through the Annual Funding Agreement (AFA) between the federal government and SSIT, certifying that federal Indian Health Services' funds and salaries are being paid to SSIT to retain a full-time (Advanced Practice Registered Nurse or Nurse Practitioner – not a "naturopathic doctor" – as this is not scored on the Indian Health Services' priority score card for medical professionals) for Federal/Tribal Fiscal Years: 2014, 2015, & 2016) for allopathic medical practitioners. (4) fraudulent, dangerous,[11] abusive, wasteful and "**worthless**" provision of medical care provided by Defendant Dr. Morlock through her implementation of the tribal

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[10] The Indian Reorganization Act (IRA) [48 Stat. 984, 25 U.S.C. § 461 et seq. (June 18, 1934)] provides the Secretary of the Interior with the discretion to acquire trust title to land or interests in land. Congress may also authorize the Secretary to acquire title to particular land and interests in land into trust under statutes other than the IRA.

[11] All vaccine providers, public or private, are required by the National Vaccine Childhood Injury Act (NCVIA – 42 U.S.C. § 300aa-26) to give the appropriate VIS (Vaccine Information Statements) to patient (or parent or legal representative prior to every dose of specific vaccines.

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Vaccines for Children ("VFC")[12] program (and other medical care) funded through the federal and/or state health funds. (5) approving payments of cosmetic dentistry for two individuals; (6) allowing a private non-tribal individual (namely Dr. Morlock and the CNM naturopathic business) to use vaccines specifically donated to the Sauk-Suiattle for that individual's own private business; (7) Defendant Dr. Morlock threatening to submit or bill "Medicaid/Medicare" for services rendered –even when she was advised that her "suspect" medical services were so "deficient" that they provided no medical value. (8) fraudulently certifying compliance with the IHS Loan Repayment Program; (9) using government funds to secretly purchase land originally meant for residential care for children, and after acquiring the land, dropping the programs for children; and (10) fraudulently misusing government resources designated for healthcare facility costs. (*Id.*; *see generally* Compl.).

On September 26, 2016, the United States of America and the State of Washington notified the court of their decision not to intervene in the action at this time. (Notice (Dkt. # 8) at 2 (citing 31 U.S.C. § 3730(b)(4)(B) and RCW 74.66.050).) Accordingly, on September 28, 2016, the court ordered the case unsealed and ordered Mr. Dahlstrom to serve Defendants. (9/28/16 Order (Dkt. # 9).).

On January 12, 2017, Defendants filed "Motion to Dismiss Complaint" (Dkt # 13), and "Supplemental Motion to Dismiss Complaint and Motion for Imposition of Sanctions and Award of Attorney's Fees"[13] (Dkt # 14). This memorandum is submitted in opposition to those motions. In essence, the Defendants' argument is that even if Plaintiff is able to move forward with his (novel) *qui tam* complaint based on common-law and constitutional violations of the

[12] The **Vaccines for Children Program** (**VFC**) is a federally funded program in the United States of America providing no-cost vaccines to children who lack health insurance or who cannot otherwise afford the cost of the vaccination. The VFC program was created by the Omnibus Budget Reconciliation Act of 1993, P.L. 103-66 (OBRA '93), signed into law on August 10, 1993, and is required to be a new entitlement of each state's Medicaid plan.

[13] Although Defendant Sauk-Suiattle Indian Tribe invokes its "Sovereign Immunity" status across the board, it cannot seek to also marginalize Plaintiff's concerns that there are in-fact real victims of the fraud and overwhelming evidence of dangerous medicine practices performed by Defendant Dr. Morlock and acquiesced by the Sauk-Suiattle Indian Tribe's governing body politic and individual defendants, including Defendant CNM. Defendant Tribe cannot speak for United States of America, Plaintiff, the individual defendants, and the CNM, the tribes enrolled members and others interfacing with the tribal health clinic.

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rights of its own tribal members to be treated with "safe" and "effective" medicines against the individual defendants, Plaintiff should still be severely sanctioned for having the audacity to sue an Indian tribe under the False Claims Act, even though the law on this issue is not settled at all.

Further, the Defendants want to argue that even substantial violations of the Constitution or that prohibits [Plaintiff] from exercising his constitutional rights to file *qui tam* complaint, it can avoid accountability under the guise of "Sovereign Immunity". As explained in more detail below, it is a bedrock principle of our legal system that if an agency of the government commits fraud and/or an unconstitutional act, private citizens can seek redress for that violation of the Constitution from the Courts. It especially applies when the Defendants, the Sauk-Suiattle Indian Tribe, *et al*., fail to take action to protect their most vulnerable from dangerous medicine and then continue to perpetuate fraud upon the United States of America.

ADDITIONAL ARGUMENT

I. The False Claims Act, as a Statute of General Applicability, Applies to the Suak-Suiattle Indian Tribe in Suits Brought By or on Behalf of the United States.

The linchpin of SSIT's argument that the FCA does not apply to Indian tribes is its reliance on the interpretive presumption that the word "person" does not include a sovereign entity. Based on this presumption, SSIT concludes that, in absence of a specific reference to Indian tribes in the text and legislative history of the FCA, the statute does not apply to tribes.

This is not the law. Instead, whether a sovereign is included in the definition of "person" depends on the legislative environment of the FCA. Because the FCA is a broad statute of general applicability, the term person is properly understood to include tribal entities like SSIT. SSIT's attempt to limit the application of this term based on tribal sovereign immunity is without merit because no such immunity exists where, as here, suit is brought by or on behalf of the United States. The sole "sovereign immunity" case cited by the Tribe, United States v. United States Fidelity & Guaranty Company, 309 U.S. 506 (1940), makes it clear that Indian tribes derive their rights and powers solely from federal law and that any tribal immunity can either be conferred or taken away by the United States government.

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In False Claims Act cases, the relators bring an action on behalf of the United States government. The United States government is the plaintiff. While a tribe may have sovereignty, tribal sovereign immunity may not be interposed against the United States because the United States is a superior sovereign. U.S. v. Red Lake Band of Chippewa Indians, 827 F.2d 380, 382 (8th Cir. 1987). This ruling is seconded by the Ninth Circuit Court of Appeals which has held that "the Tribe's own sovereignty does not extend to preventing the Federal Government from exercising its superior sovereign powers." United States v. Yakima Tribal Court, 806 F.2d 853, 861 (9th Cir. 1986), cert. denied 481 U.S. 1069, (1987); United States v. White Mountain Apache Tribe, 784 F.2d 917, 920 (9th Cir. 1986); Consumer Financial Protection Bureau v. Great Plains Lending, LLC, ___ F.3d ___ (9th Cir., No. 14-55900, 01/20/2017)

A. Indian Tribes Cannot Assert Immunity in Suits Brought by the United States.

Whatever constitutional questions may arise when a private party is suing a state or an Indian tribe, these questions are not implicated when the United States is bringing suit. As a result, any statutory presumption based on the ability of a tribe to assert sovereign immunity does not apply when the United States is the plaintiff. It is well-settled that it "does no violence to the inherent nature of sovereignty" for the United States to sue a sovereign entity like a state or an Indian tribe. United States v. Texas, 143 U.S. 621, 645 (1892); Quileute v. Babbitt, 18 F.3d 1456, 1459-60 (9th Cir. 1994) ("tribal sovereignty does not extend to prevent the federal government from exercising its superior sovereign powers"). As a result, when the United States is bringing suit against an otherwise sovereign entity, sovereign immunity is not a defense. Seminole Tribe of Fla. v. Florida, 517 U.S. 44, 72-73 (1996). In Blatchford v. Native Village of Noatak, 501 U.S. 775, 781-82 (1991), the Court summed up nearly 100 years of jurisprudence on the subject of whether the United States could sue states: "We have hitherto found a surrender of immunity against [states] in . . . suits by the United States." *Accord* West Virginia v. United States, 479 U.S. 305, 311-312 (1987) ("States have no sovereign immunity against the Federal Government"); Travis v. Reno, 163 F.3d 1000, 1006 (7th Cir. 1999) ("the eleventh amendment does not curtail the national government's ability to

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sue a state in federal court").

Similarly, it is beyond doubt that tribal immunity cannot be asserted in suits brought by the United States. *E.g.* Reich v. Mashantucket Sand & Gravel, 95 F.3d 174, 179 (2nd Cir. 1996); Quileute, 18 F.3d at 1459-60. Because "[t]ribal sovereign immunity does not bar suits by the United States," the United States "may pursue an action against Indian tribes" in the exact same manner that it may "enforce the act against any other entity that violates" federal law. Florida Paraplegic Ass'n, Inc. v. Miccosukee Tribe of Indians, 166 F.3d 1126, 1135 (11th Cir. 1999). Tribal immunity does not act as a shield against the United States "even when Congress has not specifically abrogated tribal immunity." EEOC v. Peabody Western Coal Co., 400 F.3d 774, 781 (9th Cir. 2005); *see also* United States v. Red Lake Band of Chippewa Indians, 827 F.2d 380, 382 ("it is an inherent implication of the superior power exercised by the United States over Indian tribes that a tribe may not interpose its sovereign immunity against the United States"). As a result, no matter what level of sovereignty Indian tribes may possess, "they have no sovereign immunity in a suit brought by the United States." United States v. Lemieux, 2003 WL 23200359 (W.D. Wis. 2003). For this reason, courts consistently have permitted the United States to enforce federal laws against Indian tribes and their members over objections and defenses rooted in tribal immunity. United States v. Funmaker, 10 F.3d 1327, 1330-31 (7th Cir. 1993); Smart v. State Farm Ins. Co., 868 F.2d 929, 932-33 (7th Cir. 1989).

B. The Word "Person" in the FCA Includes Sovereign Entities

As amended in 1986, the FCA subjects to liability in a suit by the United States any "person" who knowingly submits a false claim to the government. 31 U.S.C. §§ 3729(a), 3730(a). In the absence of any legitimate claim by SSIT of sovereign immunity, the term "person" in the FCA is properly understood to include tribal entities like SSIT.

While the FCA does not define the term "person," the Supreme Court has repeatedly recognized that the term "person", and other similar open-ended words, are terms of general application. Jefferson County Pharm. Ass'n v. Abbott Labs., 460 U.S. 150, 156 (1982). For

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example, in Sims v. United States, 359 U.S. 108, 112 (1959), a provision of the tax code required that "any person" in possession of property subject to federal levy must surrender it to the United States. The state auditor claimed that the state was not a "person" within the meaning of a provision of the code that defined the term "person" without expressly referencing states. Even though the statutory definition of "person" did not include states, and even though it expressly mentioned the United States and the District of Columbia, the Court held that the statute encompassed states because the term "person" was an "all-inclusive term[] of general application." *Id.* at 112.

In California v. United States, 320 U.S. 577 (1944), the language of the Shipping Act, 46 U.S.C. § 801, provided that it applied to "any person" shipping goods in interstate commerce. Id. at 585-586 (*citing* 46 U.S.C. § 801). Although the statute did not explicitly apply to states, and even though its definition expressly included "corporations, partnerships, and associations," the Court held that "person" includes states for the purposes of that act.

Importantly, the Court rejected the state's argument that it was not a "person" for the purposes of the Act simply because it was not specifically mentioned in the Act's language. *Id.* at 585. The Court cautioned that it "need not waste time on useless generalities about statutory construction to conclude that entities other than technical corporations, partnerships and associations are 'included' among the 'persons' to whom the Shipping Act applies if its plain purposes preclude their exclusion." *Id. Accord* Ohio v. Helvering, 292 U.S. 360, 368 (1934) (state is a "person" under revenue statute although "person" was defined as "partnership association, company, or corporation, as well as a natural person").

Similarly, in United States v. California, 297 U.S. 175 (1936), the United States imposed a statutory penalty on California for violating a generally applicable statute regulating the conduct of "common carrier[s]." The Court rejected the state's attempt to "invoke the canon of construction that a sovereign is presumptively not intended to be bound" unless it is expressly named in the statute. Even though the statute did not include states within the term "common carrier," the Supreme Court held that the state was included in the general

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term "common carrier" because the statute, "all-embracing in scope and national in its purpose," was as "capable of being obstructed by State as by individual action." Id. at 186.

In Fed. Power Comm'n v. Tuscarora Indian Nation, 362 U.S. 99 (1960), the Federal Power Commission granted a license to condemn land owned by the Tuscarora Indian Nation pursuant to the Federal Power Act ("FPA"). The FPA provision at issue authorized the condemnation of "the lands or property of others." Tuscarora, 362 U.S. at 115 (*citing* FPA § 21). The tribe argued that § 21 of the FPA was "only a general Act of Congress" and therefore "does not apply to Indians or their land." *Id.* The Court rejected this argument, holding that the FPA's reference to "others" made the statute's applicability "broad" and "general." *Id.* at 118. As a result, the Court asked not whether Congress specifically included Indian lands in the language of the FPA, but rather whether Congress explicitly excluded tribal lands. *Id.* Finding that Congress did not explicitly exclude tribal lands, the Court held that the FPA "includes Indians and their property interests." *Id.* at 116.

As these cases indicate, the word "person," as well as other general terms, includes sovereign entities when the United States is bringing suit to enforce federal law. Reading these cases together, the rule emerges that when the United States is bringing suit, a broad, all-inclusive term like "person" includes a sovereign entity unless it is specifically excluded from the statute's reach. Sims, 359 U.S. at 112; Tuscarora, 362 U.S. at 118. Even when a statute does define "person" without expressly including sovereign entities in the definition, "person" will still include a sovereign entity when the purpose of the statute precludes the sovereign's exclusion. California v. United States, 320 U.S. at 585-586; Helvering, 292 U.S. at 368. The purpose of the statute precludes the exclusion of a sovereign entity when the statute is capable of being violated by sovereign action as well as by private action. United States v. California, 297 U.S. at 186. Thus, "a statute of general application presumably applies to Indian tribes unless it affects exclusive rights of governance over purely intramural matters." Mashantucket, 95 F.3d at 179; Donovan v. Coeur d'Alene Tribal Farm, 751 F.2d 1113, 1116 (9th Cir. 1985).

In the present case, the FCA subjects to liability any "person" who knowingly submits

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a false claim to the United States. 31 U.S.C. §§ 3729(a), 3730(a). As the Supreme Court stated, in enacting the FCA "Congress wrote expansively, meaning to reach all types of fraud, without qualification, that might result in financial loss to the Government." Cook County v. United States ex rel. Chandler, 538 U.S. 119, 129 (2003). The FCA's use of the all-inclusive term "person" is consistent with this objective, and the FCA does not explicitly exclude sovereign entities from its scope. Sims, 359 U.S. at 112; Tuscarora, 362 U.S. at 118. Such entities, including Indian tribes and tribal enterprises like SSIT, just like other corporations and governmental bodies, are "at the receiving end of all sorts of federal funding schemes and thus no less able than individuals or private corporations to impose on the federal fisc and exploit the exercise of the federal spending power." Chandler, 538 U.S. at 129; California v. United States, 320 U.S. at 585-586; United States v. California, 297 U.S. at 186. In sum, because Indian tribes are not specifically excluded by the language and the history of the FCA, and because they are as capable of defrauding the United States as private entities, they are properly included in the term "person" in a suit brought by the United States. Tuscarora, 362 U.S. at 118; Sims, 359 U.S. at 112; California v. United States, 320 U.S. at 585-86.

Additional support for the conclusion that the term "person" in the FCA includes Indian tribes in the absence of an interpretive presumption to the contrary is the Supreme Court's interpretation of that term in Chandler. In that case, the defendant county argued that it was not a "person" for the purposes of the FCA because Congress did not contemplate that it was including local governments within the scope of the FCA at the time of its enactment. Chandler, 538 U.S. at 1219. The Court rejected this argument, holding that it was immaterial that Congress did not specifically contemplate that local governments would be making false claims against the United States at the time of the FCA's enactment. *Id.* at 128-29. Furthermore, it did not matter that both the text and the history of the FCA were silent as to the inclusion of local governments in the definition of the word "person." *Id.* at 129. The Court held that the historical place of local governments did not change the fact that "Congress wrote expansively, meaning to reach all types of fraud, without qualification, that

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might result in financial loss to the Government." *Id.* The Supreme Court noted that whatever "municipal corporations may have been doing in 1863, in 2003 local governments are commonly at the receiving end of all sorts of federal funding schemes and thus no less able than individuals or private corporations to impose on the federal fisc and exploit the exercise of the federal spending power." *Id.* Thus, local governments are "persons" under the FCA. *Id.*

C. The Legislative History of the False Claims Act Indicates that Congress Intended the FCA to be Read Broadly.

A resort to legislative history does not rebut the presumption that "person" includes tribes. While silent on its application to Indian tribes, the legislative history of the FCA supports the view that "Congress wrote expansively" and intended "to reach all types of fraud, without qualification." Chandler, 538 U.S. at 129. Indeed, the Senate report addressing the bill expressly states that the "False Claims Act reaches all parties who submit false claims" and is "intended to reach all fraudulent attempts to cause the Government to pay out sums of money." Id. S. Rep. 99-345, 1986 U.S.C.C.A.N. 5266, 5273-74 (1986) (emphasis added). And as the Supreme Court has emphasized, in enacting the FCA "the objective of Congress was broadly to protect the funds and property of the Government from fraudulent claims." Rainwater v. United States, 356 U.S. 590, 592 (1958). Nothing in the legislative history supports SSIT's claim that Congress intended to exclude tribal entities from liability to the United States under the FCA when those entities commit fraud against the United States.

D. The United States' Trust Relationship with Tribes Does Not Preclude the United States From Redressing Fraud Under the FCA.

Although the United States has a special trust relationship with Indian tribes, this responsibility does not require the United States to forgo enforcing a generally applicable statute. Osage Tribal Council v. United States Dep't of Labor, 187 F.3d 1174, 1184 (10th Cir. 1999) (the Secretary of Labor did not violate the government's trust obligation to an Indian tribe when he sued a tribal council pursuant to his "duties with respect to Congress' mandate on safe drinking water," even though the Secretary also had "duties with respect to

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administering Indian property or funds"). As a result, the United States' trust responsibilities will not override a generally applicable law, and the Court will not read an "Indian trust exemption into the statute," in the absence of "support for the exemption" in the statute itself. Dep't of Interior v. Klamath Water Users Protective Ass'n, 532 U.S. 1, 14 (2001).

In Nevada v. United States, 463 U.S. 110 (1983), the Court held that the government's trust responsibility did not prevent the Department of the Interior from acting as a trustee of Indian land while at the same time representing the government's interest in a water reclamation project under a general statute. The Court rejected as "unrealistic" the argument that "the government may not perform its obligation" to Indian tribes when "Congress has obligated it to represent other interests as well." *Id.* at 128. The Court concluded that the "Government does not 'compromise' its obligation" to tribes simply because "it simultaneously performs another task for another interest" required by statute. *Id.* For this reason, the "Supreme Court has not yet held that an Act of Congress is subject to invalidation on the ground that it violates the federal government's general trust obligation to Indians." Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin v. Norton, 367 F.3d 650, 667 (7th Cir. 2004).

F. The Blackfeet Interpretive Presumption Does Not Apply Because the FCA Was Not Enacted For the Benefit of Indian Tribes.

The Blackfeet presumption applies only to federal statutes that are "passed for the benefit of dependent Indian tribes." Artichoke Joe's California Grand Casino v. Norton, 353 F.3d 712, 729-730 (9th Cir. 2003) (*citing* Montana v. Blackfeet Tribe, 471 U.S. 759, 766 (1985)). As the Supreme Court held in Blackfeet, the canon directing construction of statutes in favor of Indians applies "in cases involving Indian law." Blackfeet, 471 U.S. at 766.

Consequently, courts apply the presumption only when the statute at issue was enacted in the context of Indian law. *E.g.*, Grand Traverse Band of Ottawa and Chippewa Indians v. Office of U.S. Attorney, 369 F.3d 960, 971 (6th Cir. 2004); Connecticut ex rel. Blumenthal v. U.S. Dept. of Interior, 228 F.3d 82, 92 (2nd Cir. 2000); Penobscot Indian Nation v. Key Bank

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of Maine, 112 F.3d 538, 545 (1st Cir. 1997); Muscogee (Creek) Nation v. Hodel, 851 F.2d 1439, 1444 (D.C. Cir. 1988). The FCA is not an Indian-related statute, nor was it passed for the benefit of Indians. Rather, it is a generally applicable statute that provides broad redress for false claims made on the United States Treasury. Rainwater, 356 U.S. at 592 ("the objective of Congress was broadly to protect the funds and property of the Government from fraudulent claims."). Because the FCA was passed neither for the benefit of Indians nor even in the context of Indian law, the Blackfeet presumption does not apply.

G. Individual Defendants are Still Liable, Regardless of whether Tribe Itself is Liable

Plaintiff Relator would repeat the arguments made on Pages 2 and 3 above, and in Section III of the United States brief. (Dkt. 25-1, at 8-9) Even if the FCA does not apply to the Suak-Suiattle Indian Tribe, the individual defendants are liable under the FCA, even if they were tribal officials or employees acting "in the course of their official duties". Stoner, 502 F.3d at 1125; U.S. v. Menominee Tribal Enters., 601 F. Supp. 2d at 1069-71. Not only can tribal officials be held personally liable for defrauding the United States for the benefit of their tribe, they can of course be held liable for defrauding the United States for their own personal benefit or for stealing federally provided funds or other resources for personal gain. This makes tribal employees Ronda Metcalf and Christine Morlock personally liable under the FCA. Robert Morlock and Community Natural Medicine PLLC, in diverting federal resources for their private gain, were not even tribal employees or entities, and are also liable under FCA.

H. Absolutely No Basis for SSIT's Request for Imposition of Sanctions

The request by Defendant Sauk-Suiattle Indian Tribe to impose sanctions on Plaintiff Relator and his counsel is absolutely frivolous, and has no basis in either fact or law.

The sole authority cited by Defendant SSIT for imposition of sanctions is 28 U.S.C. § 1915. (Dkt. 13, at 5) However, 28 U.S.C. § 1915 deals solely with in forma pauperis lawsuits – i.e. suits where the Court waives the filing fee due to the plaintiff being impoverished. This statute has no application to regular suits where the filing fee is paid. The only sanction is to dismiss a meritless lawsuit where the filing fee has not been paid. 28 U.S.C. § 1915(e)(2).

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Frankly, it is frivolous and a violation of Rule 11 F.R.Civ.P. for Defendant SSIT's counsel – an experienced trial attorney who was admitted to the Washington Bar on May 16, 1983 (https://www.mywsba.org/LawyerDirectory/LawyerProfile.aspx?Usr_ID=13116) – to even cite 28 U.S.C. § 1915 – which is clearly titled "Proceedings in forma pauperis", clearly applies only to such proceedings, and provides no sanction other than mere dismissal of a meritless lawsuit filed without payment – as the basis to impose sanctions in this case.

Defendant SSIT and its counsel appear to be trying to evade the procedures required by Rule 11(c)(2) F.R.Civ.P. (including the 21 day safe harbor provision), and instead seek sanctions under a totally inapplicable statute. Moreover, in their supplemental filing (Dkt. 14), they implicitly misrepresent (or at least omit) relevant facts surrounding Mr. Dahlstrom's prior employment litigation during 1998 to 2001 against the State of Washington. The undersigned, who also represented Mr. Dahlstrom in the prior litigations, has provided a declaration, with relevant exhibits to correct the record. (Pope Decl., Dkt. 26) Mr. Dahlstrom was successful in the prior litigation, and won a $100,000.00 settlement judgment in July 2001. (Dkt. 26, ex. 2) The Rule 11 sanctions were imposed because of Mr. Pope's procedural errors, and not because any of Mr. Dahlstrom's claims were frivolous, were appealed, and then exonerated without any payment as part of the settlement. *Id.* These misrepresentations, at a minimum, were careless.

The sole federal sanctions case cited by Defendant SSIT, Hardin v. White Mountain Apache Tribe, 779 F. 2d 476, 480 (9th Cir. 1985), involved Title VII of the Civil Rights Act of 1964 and 42 U.S.C. § 1983, and not 28 U.S.C. § 1915 (or even Rule 11 F.R.Civ.P.). In Hardin, the district court requirement for plaintiff to pay defendants' attorney fees under these statutes was upheld on appeal, based on bad faith filings that were "replete with material omissions and misstatements", with numerous false factual assertions that were made in "bad faith". *Id.* By contrast, the Ninth Circuit imposed no sanctions on appeal, where only the truth was presented.

Under Rule 11(c)(2) F.R.Civ.P., the Court should consider requiring SSIT and its counsel to pay Plaintiff Relator's attorney fees for responding to the sanctions request. This Court has already warned Defendants' counsel about Rule 11 violations. (Dkt. 22, at 9)

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Respectfully submitted this 13th day of February, 2017.

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Proof of Service

I certify that, on February 13, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following registered with CM/ECF, including the Honorable James L. Robart, and all counsel of record for the other parties to this case, including the following people listed on the system:

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Signed at Bellevue, Washington this 13th day of February, 2017.

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