

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 17-1694 PSG (SSx)	Date	February 14, 2019
Title	United States ex rel. Integra Med Analytics LLC v. Providence Health and Services, et al.		

Present: The Honorable	Philip S. Gutierrez, United States District Judge
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Wendy Hernandez

Not Reported

Deputy Clerk

Court Reporter

Attorneys Present for Plaintiff(s):

Attorneys Present for Defendant(s):

Not Present

Not Present

Proceedings (In Chambers): Supplemental Briefing Order

On February 13, 2019, the Court held a hearing on the motions to dismiss filed by Defendants Providence Health & Services and its affiliate hospitals (the “Hospital Defendants”) and J.A. Thomas and Associates, Inc. (“JATA”). *See* Dkts. # 56, 57. As the Court indicated at the hearing, it believes that its decision on these motions could be aided by additional submissions. Accordingly, the Court requests that the parties submit the following briefs and materials.

A. Request for Judicial Notice

Defendants ask the Court to find at this stage that Relator Integra Med Analytics LLC’s (“Relator”) claims are precluded by the False Claims Act’s public disclosure bar. This may require the Court to determine whether various information available online about JATA’s business practices was publicly disclosed from the news media within the meaning of the statute. JATA originally submitted a request for judicial notice that contains links to various online documents that Defendants contend were publicly disclosed from the news media. *See Request for Judicial Notice*, Dkt. # 59 (“*RJN*”). For many of these documents, JATA simply linked directly to the PDF of the document. *See id.* This is presumably because Defendants initially took the position that the mere fact that a document is available online is enough to show public disclosure. However, as the Court explained at the hearing, it believes that the public disclosure inquiry may require analysis of the nature of the *source* of the online information. Because the direct links to the PDFs do not allow the Court to see the context in which the documents were available and presented, they do not allow for such an analysis.

Accordingly, for each document, JATA is requested to supplement its request for judicial notice with additional information about the sources of the PDF documents and the context in

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which the documents were presented. The Court envisions this including a link to the webpage where the PDF documents are available (presumably as links on that page). In the event the documents are linked on a subpage of an organization's website, JATA should provide the Court with instructions for how a user could navigate to that subpage from the organization's home page. If it is not possible to navigate directly to the subpage, and the subpage or document could be found only through a search, JATA should inform the Court of that. JATA is requested to submit this information to the Court no later than **February 22, 2019**.

B. Supplemental Briefs

After JATA supplements its request for judicial notice, the parties are requested to submit supplemental briefs addressing the following issues:

1. The Court understood Defendants' initial briefs to argue that Relator's claims would be precluded by the public disclosure bar as substantially similar to publicly disclosed information only if the Medicare claims data, the reports from the HHS Office of the Inspector General, *and* the online information about JATA's business practices were *all* publicly disclosed. *See, e.g., JATA Reply*, Dkt. # 57, 17:15–19 (“The combination of the publicly disclosed Medicare claims data which reflects the rate at which certain secondary diagnosis codes are used by Providence hospitals . . . and the public disclosures involving JATA's business practices and [HHS] OIG's public skepticism about Kwashiorkor . . . are substantially similar to Integra's allegation in the SAC.”).

At the hearing, Defendants alternatively argued that the Court does not need to decide whether the information about JATA's business practices was publicly disclosed because public disclosure of the Medicare claims data and the OIG reports *alone* would be enough to trigger the public disclosure bar. As this argument has not yet been briefed, the parties are requested to brief whether public disclosure of the Medicare claims data and OIG reports alone would be sufficient to trigger the public disclosure bar because Relator's allegations are substantially similar to information from those sources. It appears that the Ninth Circuit's decision in *United States ex rel. Mateski v. Raytheon Co.*, 816 F.3d 565 (9th Cir. 2016), may provide the standard the Court should use evaluate substantial similarity. The parties are requested to address whether *Mateski* supplies the relevant standard and, if it does, how the standard should be applied in determining whether Relator's allegations are substantially similar to information from the Medicare claims data and OIG reports alone.

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2. As the Court explained at the hearing, it is not convinced by Defendants' argument that all information generally available online has been "publicly disclosed . . . from the news media." *See* 31 U.S.C. 3730(e)(4)(A). Accordingly, the parties are requested to further brief the issue of what the term "news media" means in the statute. In light of the Supreme Court's instruction that courts interpreting undefined terms in the FCA should look first to their "ordinary meaning," *see Schindler Elevator Corp. v. United States ex rel. Kirk*, 563 U.S. 401, 407 (2011), the parties should, at a minimum, provide their views on the "ordinary meaning" of the term "news media." The parties should also address the level of generality at which the Court should look at these sources; for example, should it decide whether YouTube as a whole is a news media source or should it instead look at the individual YouTube account at issue? Finally, for each piece of information about JATA's business practices that Defendants argue has been publicly disclosed, the parties should address why it has or has not been publicly disclosed from the news media under the standard they propose.

3. In asking the Court to determine at this stage whether the information about JATA's business practices was publicly disclosed from the news media, Defendants rely on information outside the complaint. Given that it appears that resolution of this issue may turn on factual determinations about the nature of the online sources of the business practice information, the parties are requested to brief whether this issue can be appropriately decided on a motion to dismiss under Rule 12(b)(6).

The supplemental briefs should be submitted simultaneously on **March 8, 2019** and may not exceed 25 pages in length. As it appears that the Hospital Defendants and JATA largely take the same positions on these issues, they are encouraged to submit a single joint brief. In the event they choose to submit separate briefs, the combined page length of the briefs may not exceed 25 pages.

IT IS SO ORDERED.