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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

**UNITED STATES OF AMERICA *ex*
rel. INTEGRA MED ANALYTICS
LLC,**

Plaintiffs,

v.

**PROVIDENCE HEALTH
SERVICES, *et al.*,**

Defendants.

Case No. 2:17-cv-01694-PSG-SS

**DEFENDANTS' JOINT
SUPPLEMENTAL BRIEF IN
SUPPORT OF THEIR MOTIONS
TO DISMISS THE SECOND
AMENDED COMPLAINT**

Complaint Filed: March 2, 2017
FAC Filed: March 28, 2017
SAC Filed: Aug. 10, 2018

Honorable Philip S. Gutierrez

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INTRODUCTION

Integra Med Analytics (Integra) accuses Defendants¹ of defrauding Medicare even though Integra has no actual knowledge of any conduct by any Defendant in connection with any patient, let alone conduct related to any Medicare claim. Instead, Integra asks this Court to go where no court has gone before: to allow a relator to pursue a speculative hypothesis of fraud based on (1) a supposedly unique analysis of Medicare claims data disclosed by the government to Integra, (2) official reports issued by the Office of Inspector General of the Department of Health and Human Services (OIG), and (3) various materials that Integra found on public websites. Integra's lawsuit is foreclosed by the False Claim Act's (FCA) public disclosure bar because each of these categories of material was disclosed through a channel specified in the statute, each disclosure was public, and the lawsuit parrots information from these public disclosures. Having triggered the bar with its own pleading, Integra can prosecute this suit only if it can show that it is an original source under the statute, which it cannot. 31 U.S.C. § 3730(e)(4)(A).

The Court has requested supplemental briefing on three questions: first, whether public disclosure of the Medicare claims data and OIG reports alone would be sufficient to trigger the public disclosure bar; second, what the term "news media" means in the statute; and third, whether the Court can grant dismissal under the public disclosure bar on a motion to dismiss. Supplemental Briefing Order 2–3 (Feb. 14, 2019), ECF No. 75. The answers to the Court's questions show that dismissal of the Second Amended Complaint (SAC) is warranted. The relevant materials for the second and third question are Exhibits 13–26 of Defendants' Joint Request for Judicial Notice, which was filed with Defendants' motions to dismiss the SAC. Integra did not oppose Defendants' request for judicial notice.

¹ Defendants include J.A. Thomas and Associates, Inc. (JATA), which is now known as Nuance Communications, Inc. (Nuance), and the named Providence hospitals (referred to collectively as "Providence").

1 *First*, the Medicare claims data and OIG reports are sufficient—on their
2 own—to trigger the public disclosure bar. Integra’s allegations are substantially
3 similar to information from these sources. Integra admitted as much, both in its
4 complaint and in opposing dismissal. *See, e.g.*, SAC ¶ 49, ECF No. 49 (alleging
5 that “Relator uncovered Providence and JATA’s fraud *by employing unique*
6 *algorithms and statistical processes to analyze inpatient claims data*” that was
7 “obtained from the CMS” (emphasis added; footnote omitted)); *id.* ¶¶ 4, 121
8 (alleging that Integra’s analysis of the claims data “eliminate[d] conceivable
9 innocent explanations,” leaving fraud “the only plausible explanation” for the
10 results of Integra’s data analysis); Integra Opp. to JATA Motion to Dismiss (Opp.)
11 at 18, ECF No. 62 (asserting that Integra’s “extensive, sophisticated analysis” of
12 claims data “demonstrate[s] that there is only between 1/1,000 and less than
13 1/100,000,000 possibility (depending on the diagnosis) that Defendants’ excessive
14 use of the relevant MCCs could be attributed to chance”); *id.* at 9 (asserting that
15 Integra’s application of its “unique algorithms and quantitative processes to analyze
16 inpatient CMS claims data” showed that “*Defendants successfully implemented*
17 *their scheme to defraud Medicare*” (emphasis added) (citing SAC ¶¶ 49–121)).

18 In *U.S. ex rel. Mateski v. Raytheon Co.*, 816 F.3d 565 (9th Cir. 2016), the
19 Ninth Circuit explained that a complaint is not substantially similar to public
20 disclosures when the complaint’s allegations of fraud differ in kind or degree from
21 information in public disclosures. No such difference exists here. Integra’s
22 allegations are *based on* its purported analysis of the public disclosures, *see* SAC
23 ¶¶ 49–121, not an attempt to plead fraud at a more specific level of granularity.

24 *Second*, each of the online materials referencing or discussing Defendants’
25 business model and practices (RJN Exs. 13–26) is “news media” for purposes of the
26 FCA’s public disclosure bar. These materials further confirm that the SAC is
27 statutorily barred. The ordinary meaning of “news media” encompasses
28 information reported by a means of mass communication. That is why courts

1 consistently hold that information available on websites that report information to
2 the public constitutes “news media.” In fact, Defendants are not aware of a single
3 case from any court concluding that information freely accessible on a defendant’s
4 or industry group’s website—like the material at issue here—is not “news media.”
5 In contrast, courts have held in more than 25 cases that these sorts of websites
6 qualify as “news media” for purposes of the public disclosure bar.

7 The breadth of the ordinary definition of “news media” is consistent with the
8 bar’s intended reach—claims that repackaging information already available to the
9 government, unless the relator is an original source. This bar, as the Supreme Court
10 has recognized, precludes opportunistic litigation by those who mine public
11 information. *Schindler Elevator Corp. v. U.S. ex rel. Kirk*, 563 U.S. 401, 412
12 (2011); *Graham Cty. Soil & Water Conservation Dist. v. U.S. ex rel. Wilson*, 559
13 U.S. 280, 294–95 (2010).² Courts had already determined that “news media”
14 encompassed internet disclosures when Congress amended the public disclosure bar
15 to narrow *other* channels of disclosure in 2010. Congress’s decision to leave “news
16 media” unaffected effectively ratified those judicial interpretations

17 All of the material in Exhibits 13–26 clearly falls within the ordinary
18 understanding of “news media.” The internet allows everyone with a web browser
19 to access the specific information reported by multiple Providence hospitals, JATA,
20 a clinical documentation trade association (Association of Clinical Documentation
21 Improvement Specialists or ACDIS), and a hospital-focused news organization
22 (Becker’s Hospital Review).

23 *Third*, this Court can appropriately dismiss the SAC based on the public
24 disclosure bar pursuant to Rule 12(b)(6). The Court does not need to make factual
25 determinations about the nature of the online sources of the material in Exhibits 13–

26
27 ² Notably, the public disclosure bar only applies to *relator*-litigation; this bar
28 does not limit the *government’s* ability to pursue litigation it believes has merit.

26 to grant Defendants’ unopposed Request for Judicial Notice or to resolve Defendants’ argument that the public disclosure bar precludes Integra from pursuing the SAC. It is undisputed—and undisputable—that the sources of the internet material are Defendants’ own websites, an industry website, and a trade-association website. These materials are appropriate for judicial notice twice over: first because Integra incorporated these materials into its complaint, and second because these materials were available on the internet, which the Ninth Circuit has endorsed as a basis for judicial notice when ruling on a motion to dismiss raising the public disclosure bar. *See U.S. ex rel. Hong v. Newport Sensors, Inc.*, 728 F. App’x 660, 661 (9th Cir. 2018).

This Court can dismiss the SAC through a straightforward application of the public disclosure bar or for failure to plead fraud plausibly and with particularity.

ARGUMENT

I. THE MEDICARE CLAIMS DATA AND OIG REPORTS ALONE ARE SUFFICIENT TO TRIGGER THE PUBLIC DISCLOSURE BAR.

Even if the Court limits its consideration to the Medicare claim data and OIG reports, the public disclosure bar still applies. The claims data, and Integra’s purported analysis of it, are the heart of Integra’s allegations—and under Integra’s (misguided) theory, reveal the fraud itself. *See, e.g.*, Providence Reply in Supp. of Mot. to Dismiss (Providence Reply) at 6-7, ECF No. 68. Adding in the OIG reports underscores that Integra’s case consolidates and repackages public information.

Because CMS’s provision of claims data to Integra and the OIG reports are undisputedly federal reports that were publicly disclosed, application of the public disclosure bar based on these materials turns on whether Integra’s allegations are substantially the same as the allegations or transactions that were publicly disclosed. 31 U.S.C. § 3730(e)(4)(A). And the answer to that turns on whether the “material elements of the allegedly fraudulent transaction are disclosed in the public domain.” *Mateski*, 816 F.3d at 571 (internal quotation marks omitted). The Ninth

1 Circuit has explained that this occurs when public disclosures reveal either the
2 allegation of fraud (Z) or the misrepresented state of facts and true state of facts (X
3 + Y) that are alleged in the complaint. *Id.*; see also JATA Mem. in Supp. of Mot.
4 to Dismiss (JATA MTD) at 31–32, ECF No. 57;³ Providence Reply at 7 & n.8.

5 *Mateski* provides guidance as to how to determine substantial similarity when
6 allegations in the complaint and information in public disclosures are somewhere in
7 the middle of “virtually identical” and “completely different.” 816 F.3d at 573. It
8 instructs lower courts not to read complaints “at only the highest level of
9 generality,” but rather to assess whether the two “allege[] fraud that is different *in*
10 *kind and in degree.*” *Id.* at 578 (emphasis added; internal quotation marks omitted).
11 In that case, the prior disclosures “reveal[ed] only very generalized problems” with
12 the execution of a government contract, whereas the relator’s complaint offered
13 “specific allegations” that were “vastly more precise than the prior public reports
14 about the problems with [the contract’s execution].” *Id.* at 578–79. As a result, the
15 two were not substantially similar.⁴

16 This case is nothing like *Mateski*. Integra cannot provide greater granularity
17 than the public disclosures, because the disclosures include a report from CMS of
18 what was billed for every Medicare patient who walked through the door of
19 Providence and other hospitals. Integra used that data to allege that Defendants
20 falsely included certain secondary diagnoses to inflate their Medicare claims. SAC
21 ¶ 55. And Integra asserts that its analysis of this data is what discloses the fraud:

22 ³ JATA collectively discussed the claims data, OIG reports, and RJN Exhibits
23 13-26 in addressing substantial similarity in its brief because JATA had found no
24 court holding that such materials were not public disclosures. See generally, *infra*,
Section II.

25 ⁴ After the case was remanded, the district court dismissed *Mateski*’s
26 complaint under Rule 9(b), and the Ninth Circuit affirmed. *U.S. ex rel. Mateski v.*
27 *Raytheon Co.*, 745 F. App’x 49 (9th Cir. 2018). As Defendants’ briefing made
28 clear here, Integra’s SAC should be dismissed for this reason as well. JATA MTD
at 13–25; Providence Mem. in Supp. of Mot. to Dismiss (Providence MTD) at 22–
37, ECF No. 56-1.

1 Integra claims to have “*uncovered Providence and JATA’s fraud by employing*
2 *unique algorithms and statistical processes to analyze inpatient claims data for*
3 *short term acute care hospitals . . . obtained from the CMS.*” *Id.* ¶ 49 (emphasis
4 added and footnote omitted). According to the SAC, Integra’s analysis of the
5 claims data revealed Defendants’ overuse of these codes *and* eliminated all non-
6 fraudulent explanations. *See, e.g., id.* Figures 1, 3–16, 19–28 & ¶ 121 (“the only
7 plausible explanation . . . is that Providence, in consultation with JATA, has
8 implemented practices to maximize the amount of revenue it can receive from
9 Medicare by fraudulently upcoding”); *see generally id.* ¶¶ 49–121.

10 Under the *Mateski* standard, it is clear that Integra’s allegations are not
11 different in kind or degree—let alone kind *and* degree—from information in the
12 claims data. Under Integra’s theory, X (the misrepresented state) is the rate at
13 which certain secondary diagnoses appear on Medicare claims submitted by
14 Providence hospitals and Y (the true state) is the rate at which these same diagnoses
15 appear in claims submitted by other hospitals, such that comparing the two shows
16 Defendants’ fraudulent upcoding.⁵ Because the SAC recites Integra’s conclusions
17 about its data analysis, its allegations cannot be different in kind or degree from the
18 data itself. They are thus substantially similar under *Mateski*. *See* Providence
19 Reply at 7. This is simply not a case where there is a difference in “granularity”
20 between the disclosures and the allegations.

21 The OIG reports further confirm that the allegations in the SAC are not
22 different in kind and degree from the public disclosures. These reports repeatedly
23 highlight concerns about inappropriate use of the kwashiorkor diagnosis code,
24 including specifically at Defendant Providence Portland Medical Center. RJN Exs.
25 10 at 184, 188–89 (Providence Portland Medical Center Report); 27 at 345, 368; 28

26 ⁵ That Integra infers this comparison demonstrates fraud is fundamentally
27 flawed and a separate ground for dismissal. But Integra cannot avoid the public
28 disclosure bar just because its inference is implausible.

1 at 447, 459; 29 at 528, 547; 30 at 619, 640.⁶ Moreover, Integra is not even the first
2 relator to publicly tie kwashiorkor claims to clinical documentation practices, as that
3 “scheme” was alleged in *United States v. Kernan Hospital*, 880 F. Supp. 2d 676 (D.
4 Md. 2012). See Providence Reply at 8 & n.10. Integra’s allegations are that the data
5 shows Defendants fraudulently used the kwashiorkor code in Medicare claims.

6 The Medicare claims data and OIG reports alone are therefore substantially
7 similar to the SAC’s allegations; they are not different in kind and degree. *Mateski*,
8 816 F.3d at 578. As the court recognized in *U.S. ex rel. Casady v. American*
9 *International Group, Inc.*, 2013 WL 1702777 (S.D. Cal. Apr. 19, 2013), the fact
10 that a relator claims to have analyzed publicly disclosed data to arrive at its
11 allegation of fraud is not relevant to the substantial similarity analysis. *Id.* at *4
12 (citing cases). As discussed below, the substantial similarity is only increased by
13 considering the internet disclosures. Once those are included, the similarity
14 between Integra’s allegations and the public disclosures is not just substantial—it is
15 “virtually identical.” See *United States v. Alcan Elec. & Eng’g, Inc.*, 197 F.3d
16 1014, 1018–19 (9th Cir. 1999) (cited in *Mateski*, 816 F.3d at 574, to exemplify the
17 “virtually-identical” end of the substantial-similarity spectrum). There is next-to-
18 nothing in the SAC not found directly in or inferable from these public disclosures.

19 **II. EACH DISCLOSURE THROUGH A WEBSITE IS SQUARELY**
20 **WITHIN THE ORDINARY MEANING OF “NEWS MEDIA.”**

21 The information in RJN Exhibits 13–26 is publicly available on the websites
22 of Providence hospitals, JATA, a hospital industry organization, and a clinical
23 documentation trade association. These websites are plainly “news media,” as the
24

25 ⁶ Integra argues that the OIG report about Providence Portland Medical Center
26 noted, among other things, a lack of clarity in the coding guidelines. See, e.g., Opp.
27 to JATA MTD at 30. But that does not make Integra’s allegation different in kind
28 or degree from the publicly disclosed concern that hospitals improperly upcoded
through inappropriate use of the kwashiorkor diagnosis code.

term is used in the FCA.⁷

A. The Ordinary Meaning Of “News Media” Has A Broad Sweep That Includes Information Reported Publicly On The Internet.

1. Ordinary Meaning of “News Media”

Because the FCA does not define “news media,” courts look first to the “ordinary meaning” of these words. *Schindler Elevator*, 563 U.S. at 407; *accord Fagner v. Heckler*, 779 F.2d 541, 543 (9th Cir. 1985) (similar).

The ordinary meaning of “news” is information made publicly available. Merriam-Webster’s definition of “news” includes “previously unknown information.”⁸ The Oxford English Dictionary’s definition includes “[t]he report or account of recent (esp[ecially] important or interesting) events or occurrences, brought or coming to one as new information,” and “[n]ow esp[ecially] such information as published or broadcast.”⁹ The American Heritage Dictionary’s definition includes “[n]ew information of any kind” or “[i]nformation about recent events or happenings, especially as reported by means of newspapers, websites, radio, television and other forms of media.”¹⁰ Dictionary.com defines “news” as “a report of a recent event; intelligence; information.”¹¹

The ordinary definition of “media” is a means of mass communication. Merriam-Webster’s definition of “medium” is “a channel or system of

⁷ Even when the public disclosure bar is triggered, a relator can avoid dismissal by demonstrating that it is an original source. *Integra* cannot do so. *JATA MTD* at 33–35; *Providence MTD* at 18–22.

⁸ *News*, Merriam-Webster Dictionary (online ed. 2019), <https://www.merriam-webster.com/dictionary/news>.

⁹ *News*, Oxford English Dictionary (3d ed. 2003), <http://www.oed.com/view/Entry/126615?result=3&rskey=n0BwiW&>.

¹⁰ *News*, American Heritage Dictionary of the English Language (5th ed. 2019) (emphasis added), <https://www.ahdictionary.com/word/search.html?q=news>.

¹¹ *News*, Dictionary.com, <https://www.dictionary.com/browse/news#> (last visited Mar. 8, 2019).

1 communication, information, or entertainment.”¹² The Oxford English Dictionary
2 defines media as “[t]he main means of mass communication, esp[ecially]
3 newspapers, radio, and television, regarded collectively; the reporters, journalists,
4 etc., working for organizations engaged in such communication. Also, as a count
5 noun: a particular means of mass communication.”¹³ The American Heritage
6 Dictionary’s definition of “media” is “[a] means of mass communication, such as
7 newspapers, magazines, radio, or television.”¹⁴ And Dictionary.com defines media
8 as “the means of communication, as radio and television, newspapers, magazines,
9 and the Internet, that reach or influence people widely.”¹⁵

10 These broad ordinary meanings of “news” and “media” are consistent with
11 the generally broad scope of the public disclosure bar. The Supreme Court
12 explained in *Schindler Elevator* that the inclusion of the term “news media” in the
13 list of sources of public disclosure indicates “that the public disclosure bar provides
14 ‘a broa[d] sweep.’ ” 563 U.S. at 408 (quoting *Graham Cty.*, 559 U.S. at 290)
15 (alteration in original). It therefore held that the word “report” in another channel
16 for qualifying disclosures should be given its broad, ordinary meaning: something
17 that gives information. *Id.* at 416. And in *Graham County*, the Supreme Court
18 explained that the full list of sources that count as public disclosures provide
19 interpretive guidance as to the scope of the bar. 559 U.S. at 290, 300 (noting that
20 “news media” would include “a multitude of sources that would seldom come to the
21 attention of the Attorney General.”)

22
23 ¹² *Media*, Merriam-Webster Dictionary (online ed. 2019),
<https://www.merriam-webster.com/dictionary/medium>.

24 ¹³ *Media*, Oxford English Dictionary (3d ed. 2001),
25 <http://www.oed.com/view/Entry/115635?isAdvanced=false&result=2&rskey=y21kWW&>.

26 ¹⁴ *Media*, American Heritage Dictionary of the English Language (5th ed.
2019), <https://www.ahdictionary.com/word/search.html?q=media>.

27 ¹⁵ *Media*, Dictionary.com, <https://www.dictionary.com/browse/media> (last
28 visited Mar. 8, 2019).

1 The term “news media” should thus be given its ordinary, broad meaning so
2 that the bar fulfills its purpose: to “weed out FCA claims not based on genuine
3 whistleblower information,” *Hong*, 728 F. App’x at 662, by allowing relators who
4 have genuine whistleblowing information to invoke the original source exception,
5 31 U.S.C. § 3730(e)(4)(B).

6 The ordinary meaning of “news media” plainly encompasses internet
7 websites. In the United States, 93 percent of adults get news online. Pew Research
8 Ctr., Digital News Fact Sheet at 1 (Aug. 7, 2017) (Digital News Fact Sheet),
9 available at [http://www.pewresearch.org/wp-content/uploads/sites/8/2018/07/State-](http://www.pewresearch.org/wp-content/uploads/sites/8/2018/07/State-of-the-News-Media-2017-Archive.pdf)
10 [of-the-News-Media-2017-Archive.pdf](http://www.pewresearch.org/wp-content/uploads/sites/8/2018/07/State-of-the-News-Media-2017-Archive.pdf); see also, e.g., *About the Los Angeles Times*
11 *and how to contact us*, L.A. Times (Jan. 9, 2019, 10:45 AM),
12 <https://www.latimes.com/about/la-contact-us-htlmlstory.html> (noting that
13 latimes.com has 29 million unique visitors each month). In 2016 there were 36
14 news publishers that were originally founded on the internet, like Slate.com and
15 Vox.com. Digital News Fact Sheet at 1. The Pulitzer Prize in National Reporting
16 was awarded to the Huffington Post in 2012, which was the first time an online-
17 only news organization won that prestigious prize. Michael Calderone, *Huffington*
18 *Post Awarded Pulitzer Prize*, Huffington Post (Apr. 16, 2012, 3:05 PM; updated
19 Jan. 14, 2013), [https://www.huffingtonpost.com/2012/04/16/huffington-post-](https://www.huffingtonpost.com/2012/04/16/huffington-post-pulitzer-prize-2012_n_1429169.html)
20 [pulitzer-prize-2012_n_1429169.html](https://www.huffingtonpost.com/2012/04/16/huffington-post-pulitzer-prize-2012_n_1429169.html). And the Ninth Circuit recognized in 2014
21 that a blogger who published posts on websites she created enjoys the same First
22 Amendment protections as institutional media. *Obsidian Fin. Grp., LLC v. Cox*,
23 740 F.3d 1284, 1291 (9th Cir. 2014).

24 The nature of the internet makes it such that nearly any website can convey
25 information through mass communication akin to, and in fact faster, more
26 ubiquitously, and cheaper than, print or broadcast media. Anyone can create a
27 website with content that could be viewed by anyone with access to a web browser,
28 and through social media and other internet users, that site could be shared around

1 the world such that information in one corner of the world is shared with hundreds
2 of thousands of people. The ability to view, create, and share what is on the
3 internet makes it a means of communicating information that falls within the
4 ordinary meaning of “news media.”¹⁶

5 2. *Congress Retained the Term “News Media” When Amending*
6 *Other Channels of the Public Disclosure Bar in 2010*

7 The legislative history of the public disclosure bar further confirms that
8 Congress intended “news media” to encompass internet websites. Congress is
9 presumed to act “with awareness of relevant judicial decisions.” *United States v.*
10 *Male Juvenile*, 280 F.3d 1008, 1016 (9th Cir. 2002); *accord United States v.*
11 *Hunter*, 101 F.3d 82, 85 (9th Cir. 1996) (“[A]s a matter of statutory construction,
12 we presume that Congress is knowledgeable about existing law pertinent to the
13 legislation it enacts.” (internal quotation marks omitted)). Courts also “presume
14 that when Congress amends a statute, it is knowledgeable about judicial decisions
15 interpreting the prior legislation,” *Porter v. Bd. of Trs. of Manhattan Beach Unified*
16 *Sch. Dist.*, 307 F.3d 1064, 1072 (9th Cir. 2002), and “when judicial interpretations
17 have settled the meaning of an existing statutory provision, repetition of the same
18 language in a new statute indicates, as a general matter, the intent to incorporate its
19 . . . judicial interpretations as well.” *Merrill Lynch, Pierce, Fenner & Smith Inc.*
20 *v. Dabit*, 547 U.S. 71, 85–86 (2006) (internal quotation marks omitted); *Miranda*
21 *B. v. Kitzhaber*, 328 F.3d 1181, 1189 (9th Cir. 2003) (per curiam) (same).

22 Congress enacted the public disclosure bar in 1986, “[s]eeking the golden
23

24 ¹⁶ Congress recognizes the internet as a means of mass communication. *E.g.*,
25 Letter from Adam B. Schiff, Member, U.S. House of Representatives, to Jeffrey
26 Bezos, Chief Exec. Officer, Amazon at 1 (Mar. 1, 2019),
27 <https://schiff.house.gov/imo/media/doc/%5bFinal%5d%20Letter%20to%20Bezos%20re%20vaccine%20information.pdf> (“As more Americans use the Internet and
28 social media platforms as their primary source of information, it is important that
we explore the quality of the information that they receive . . .”).

1 mean between adequate incentives for whistle-blowing insiders with genuinely
2 valuable information and discouragement of opportunistic plaintiffs who have no
3 significant information to contribute of their own.” *Graham Cty.*, 559 U.S. at 294
4 (internal quotation marks omitted). It included “news media” as one of the
5 channels of public disclosure that could bar a *qui tam* suit. See False Claims
6 Amendments Act of 1986, Pub. L. No. 99-562, sec. 3, § 3730(e)(4)(A), 100 Stat.
7 3153, 3157.

8 Courts subsequently interpreted “news media,” which was undefined in the
9 statute, to include internet websites. See, e.g., *U.S. ex rel. Unite Here v. Cintas*
10 *Corp.*, 2007 WL 4557788, at *14 (N.D. Cal. Dec. 21, 2007) (fact was publicly
11 disclosed “in the news media” because “that information was available on the
12 Internet”); *U.S. ex rel. Brown v. Walt Disney World Co.*, 2008 WL 2561975, at *4
13 (M.D. Fla. June 24, 2008) (Wikipedia is “news media”); *U.S. ex rel. Doyle v.*
14 *Diversified Collection Servs., Inc.*, 2006 WL 3834407, at *3 (S.D. Ohio Dec. 29,
15 2006) (webpage was public disclosure); *U.S. ex rel. Radcliffe v. Purdue Pharma*
16 *L.P.*, 582 F. Supp. 2d 766, 772 (W.D. Va. 2008) (drug package insert posted on
17 manufacturer’s website was “news media”). When Congress amended the public
18 disclosure bar in 2010, it explicitly narrowed *other* channels of disclosure—but it
19 again included “news media” as an enumerated channel of public disclosure. See
20 Patient Protection and Affordable Care Act, Pub. L. No. 111-148, tit. X,
21 § 10104(j)(2), 124 Stat. 119, 901 (2010).

22 Therefore, courts should presume that Congress knew that “news media” had
23 been interpreted by courts to include internet websites and that by retaining the term
24 “news media” while altering other channels of disclosure, Congress intended the
25 term news media to include internet websites within its “broad sweep.”

26 3. Judicial Interpretation of “News Media”

27 Consistent with the ordinary broad meaning of “news media” and Congress’
28 intent, courts have found that internet websites constitute “news media” when they

1 are readily accessible and convey information. For example, in *U.S. ex rel.*
2 *Osheroff v. Humana, Inc.*, the Eleventh Circuit concluded that “news media”
3 included the defendant medical clinics’ publicly available websites because the
4 term “has a broad sweep” and the clinics’ websites were “intended to disseminate
5 information about the clinics’ programs.” 776 F.3d 805, 813 (11th Cir. 2015).
6 Similarly, in *U.S. ex rel. Repko v. Guthrie Clinic, P.C.*, the court found that the
7 websites for GuideStar and the Foundation Center (two organizations that provide
8 information about nonprofit and philanthropic organizations), Standard & Poor’s,
9 and Bloomberg Professional were “news media” because they are “available to
10 anyone with an internet connection and a web browser” and “serve the same
11 purpose as newspapers or radio broadcasts, to provide the general public with
12 access to information.” 2011 WL 3875987, at *7–8 (M.D. Pa. Sept. 1, 2011).

13 Other courts have similarly reasoned. See *U.S. ex rel. Cherwenka v. Fastenal*
14 *Co.*, 2018 WL 2069026, at *7 (D. Minn. May 3, 2018) (website need not “function
15 as a news outlet to qualify as news media;” defendant’s website “was news media
16 because it was ‘publicly available’ and ‘intended to disseminate information’ ”);
17 *Green v. AmerisourceBergen Corp.*, 2017 WL 1209909, at *6 (S.D. Tex. Mar. 31,
18 2017) (“blog posts and newsletters published online” were “news media” because
19 they were “easily available to the public and . . . updated on a regular basis”); *U.S.*
20 *ex rel. Hirt v. Walgreen Co.*, 2016 WL 815512, at *5 (M.D. Tenn. Mar. 2, 2016)
21 (press release on government website was “news media;” it is “information found
22 on a readily accessible public website that constitutes public disclosure”); *U.S. ex*
23 *rel. Green v. Serv. Contract Educ. & Training Tr. Fund*, 843 F. Supp. 2d 20, 32–33
24 (D.D.C. 2012) (promotional page on defendant’s website was “news media;” it had
25 an internet address and no restrictions on access).

26 Courts have explained that interpreting “news media” to broadly encompass
27 publicly accessible websites avoids entangling the courts in arbitrary line-drawing
28 among websites and hews to the overriding goal of the public disclosure bar:

1 precluding relators from pursuing opportunistic litigation not premised on any
2 actual whistleblowing. *See, e.g., U.S. ex rel. Kraxberger v. Kansas City Power &*
3 *Light Co.*, 756 F.3d 1075, 1079 (8th Cir. 2014) (“news media” includes testimony
4 on Public Service Commission’s website; Commission “functions as a news
5 organization for public utilities and consumers in Missouri”); *U.S. ex rel. Oliver v.*
6 *Philip Morris USA, Inc.*, 101 F. Supp. 3d 111, 124–25 (D.D.C. 2015) (“news
7 media” includes a memo posted in online public, searchable database and public,
8 searchable webpages, the purpose of which is “to give the public an accurate
9 account of those entities’ contracting requirements” (internal quotation marks
10 omitted)); *U.S. ex rel. Harper v. Muskingum Watershed Conservancy Dist.*, 2015
11 WL 7575937, at *6–7 (N.D. Ohio Nov. 25, 2015) (press releases on defendant’s
12 website are “news media;” courts “have repeatedly held that ‘information on readily
13 accessible public websites constitutes public disclosure’ ”); *U.S. ex rel. Doe v.*
14 *Staples, Inc.*, 932 F. Supp. 2d 34, 40 (D.D.C. 2013) (shipping data available on
15 private company’s website is “news media” “in light of the ample precedent in
16 favor of broad construction of the channels of public disclosure”) ; *U.S. ex rel.*
17 *Beauchamp v. Academi Training Ctr.*, 816 F.3d 37, 43 n.6 (4th Cir. 2016) (“Courts
18 have unanimously construed the term ‘public disclosure’ to include websites and
19 online articles.”); *U.S. ex rel. Osheroff v. HealthSpring Inc.*, 938 F. Supp. 2d 724,
20 732–33 (M.D. Tenn. 2013) (“many court[s] have held that information on readily
21 accessible public websites constitutes public disclosure”).¹⁷

22
23 ¹⁷ Other courts have simply treated it as a given that “news media”
24 encompasses material published online. *In re Plavix Mktg., Sales Practices &*
25 *Prods. Liab. Litig. (No. II)*, 123 F. Supp. 3d 584, 595–96 (D.N.J. 2015) (American
26 Association for Justice online report); *Carmel v. CVS Caremark Corp.*, 2015 WL
27 3962532, at *4 (N.D. Ill. June 26, 2015) (CVS website); *U.S. ex rel. Beauchamp v.*
28 *Academi Training Ctr.*, 933 F. Supp. 2d 825, 844–45 (E.D. Va. 2013) (Wired.com
article), *vacated on other grounds by* 816 F.3d 37 (4th Cir. 2016); *U.S. ex rel. Davis*
v. Prince, 753 F. Supp. 2d 569, 592 n.34 (E.D. Va. 2011) (United Press
International website).

1 Courts within the Ninth Circuit—including the Court of Appeals itself—have
2 also embraced a broad interpretation of the internet as “news media.” The Ninth
3 Circuit held in *Hong* that a faculty profile on the website of the University of
4 California, Irvine was “news media.” 728 F. App’x at 662. The district court had
5 held that the UC Irvine profile and another faculty profile on Columbia University’s
6 website qualified as “news media” because “[i]nformation publicly available on the
7 Internet generally qualifies as ‘news media.’ ” *U.S. ex rel. Hong v. Newport*
8 *Sensors, Inc.*, 2016 WL 8929246, at *5 (C.D. Cal. May 19, 2016), *aff’d*, 728 F.
9 App’x 660 (9th Cir. 2018). The relator in *Hong* did not even appeal that issue.
10 And in affirming dismissal of the complaint under the public disclosure bar, the
11 Ninth Circuit did not so much as hint that material on the internet does not
12 constitute “news media.” *See also A–1 Ambulance Serv., Inc. v. California*, 202
13 F.3d 1238, 1244 (9th Cir. 2000) (rejecting as “cramped” a narrow interpretation of
14 the term “administrative hearing” in the public disclosure bar).

15 Several other district courts within the Ninth Circuit have similarly held that
16 websites are “news media” for purposes of the public disclosure bar. For example,
17 in *U.S. ex rel. Hill v. Harvard University*, 2017 WL 7837306, at *1 (C.D. Cal. Aug.
18 31, 2017), the court held that the government’s Clery Act website is “news media.”
19 *U.S. ex rel. Carter v. Bridgepoint Educ., Inc.*, 2015 WL 4892259, at *6 n.4 (S.D.
20 Cal. Aug. 17, 2015) held that an online comment on the San Diego Reader website
21 is “news media.” Many others agree. *See United States v. Kimberly-Clark Corp.*,
22 2017 WL 10439028, at *6 (C.D. Cal. July 14, 2017) (court filings available through
23 links in a *Law360* online article); *U.S. ex rel. Hoggett v. Univ. of Phoenix*, 2014
24 WL 3689764, at *6–7 (E.D. Cal. July 24, 2014) (posting on the PBS website);
25 *United States v. Honeywell Int’l, Inc.*, 2013 WL 12122693, at *9 (C.D. Cal. Nov. 8,
26 2013) (“Documents that are publicly available on the internet generally qualify as
27 ‘publicly disclosed’ documents under 31 U.S.C. § 3730(e)(4).”); *U.S. ex rel.*
28 *Cervantes v. Deere & Co.*, 2011 WL 5325466, at *5 (E.D. Wash. Nov. 3, 2011)

1 (“information retrieved from the Internet”); *U.S. ex rel. McLean v. Cty. of Santa*
2 *Clara*, 2011 WL 5223076, at *6 (N.D. Cal. Oct. 31, 2011) (“internet materials”);
3 *Cintas*, 2007 WL 4557788, at *14 (information “available on the Internet”).

4 Courts have interpreted “news media” broadly in non-internet contexts as
5 well. For one thing, courts regularly hold that scholarly, scientific and technical
6 periodicals and trade journals—many of which have quite narrow audiences—are
7 “news media.” Despite the narrow, presumably small, target audience, these
8 sources “disseminate information to the public” about a given topic. *U.S. ex rel.*
9 *Colquitt v. Abbott Labs.*, 864 F. Supp. 2d 499, 518 (N.D. Tex. 2012) (*Endovascular*
10 *Today* is news media); *Radcliffe*, 582 F. Supp. 2d at 770 (same for the Clinical
11 Practice Guideline, the United States Pharmacopeia—Dispensing Information, and
12 the Textbook of Pain); *U.S. ex rel. Alcohol Found., Inc. v. Kalmanovitz Charitable*
13 *Found., Inc.*, 186 F. Supp. 2d 458, 463 (S.D.N.Y. 2002) (same for scientific and
14 scholarly works), *aff’d* 53 F. App’x 153 (2d Cir. 2002). Advertising too counts as
15 news media, because the public disclosure bar “does not require that the
16 information appear in any particular form or section of a [publication].” *U.S. ex rel.*
17 *Ondis v. City of Woonsocket*, 582 F. Supp. 2d 212, 217 (D.R.I. 2008); *accord*
18 *Osheroff*, 776 F.3d at 813; *Colquitt*, 864 F. Supp. 2d at 519 (advertisement in
19 scholarly journal is “news media”). And press releases are likewise consistently
20 accepted as news media. *Ping Chen ex rel. U.S. v. EMSL Analytical, Inc.*, 966 F.
21 Supp. 2d 282, 297 (S.D.N.Y. 2013); *Carmel*, 2015 WL 3962532, at *4.

22 Given the ordinary meaning of “news media,” the provision’s purpose and
23 legislative history, and the consistently broad judicial interpretations of the term,
24 this Court should give “news media” its ordinary broad meaning when applied to
25 internet disclosures.

26 **B. Under The Broad Ordinary Meaning, All Of The Internet Sources**
27 **Of JATA’s Business Practices Are “News Media.”**

28 To rule on Defendants’ public disclosure motion, the court does not need to

1 decide whether all information generally available online has been “publicly
2 disclosed . . . from the news media,” or even delineate the outer boundary of “news
3 media” as applied to the internet. 31 U.S.C. § 3730(e)(4)(A)(iii). All that is at
4 issue here is whether the specific online sources of information about JATA’s
5 business practices that Defendants identified—and that Integra does not dispute are
6 parroted in its complaint—fall within the broad “news media” channel of the FCA’s
7 public disclosure bar. Consequently, the court only needs to decide whether the
8 *specific* internet disclosures at RJN Exs. 13–26 are “news media,” *i.e.*, whether the
9 particular materials at issue were publicly disclosed. *See, e.g., Oliver*, 101 F. Supp.
10 3d at 124–25 (finding that specific webpages at issue were “news media” in light of
11 *Schindler Elevator*’s broad reading “without deciding whether every internet
12 posting constitutes a public disclosure”).

13 All of the internet sources Defendants identified in their motions (and those
14 to which Integra referred in the SAC) are “news media” because they are (1) readily
15 accessible and (2) disseminate or convey information to the public. *E.g., Osheroff*,
16 776 F.3d at 813; *Repko*, 2011 WL 3875987, at *7–8.

17 Nuance website. RJN Exhibit 13 is an internet advertisement on Nuance’s
18 external website. This webpage is readily accessible: it has a simple internet
19 address (<http://info.nuance.com/cdi-adwords>) that will bring up this page when
20 typed into a web browser. And it conveys information about JATA’s alleged
21 “guarantee” to raise prospective client Case Mix Indices by 4-8%—information
22 which appears in five other places on Nuance’s website (www.nuance.com) and
23 which Integra recites in the complaint. RJN Ex. 13 at 202–205; Defs.’ Joint Supp.
24 To Their Joint Request For Judicial Notice In Response To February 14, 2019
25 Order (ECF No. 75) (Joint Supp. to RJN) at 1–6, ECF No. 76; SAC ¶ 24 (alleging
26 that JATA “guaranteed an increase in its clients’ Case Mix Index”). These two
27 aspects of this Nuance webpage qualify it as “news media” for purposes of the
28 public disclosure bar. *E.g., Green*, 843 F. Supp. 2d at 32 (promotional page on

1 defendant's external website was "news media" because it had a simple internet
2 address¹⁸ and access to it was not restricted); *Osheroff*, 776 F.3d at 813 (finding that
3 medical clinics' publicly-available websites containing information about their
4 services and newspaper advertisements were both "news media"). In opposing
5 dismissal, Integra did not contest that RJN Exhibit 13 qualifies as "news media."

6 Presentation on Becker's Hospital Review website. RJN Exhibit 14 is a
7 presentation titled *An 'Outside the Box' Case Study: How Clinical Documentation*
8 *Helped Baptist Health Realize Improved Financial Performance* by representatives
9 from Nuance and Baptist Health South Florida that is available on the website of
10 Becker's Hospital Review. RJN Ex. 14 at 207–209. It too counts as "news media"
11 because it is readily accessible (through a direct URL or a few clicks) and conveys
12 information about clinical documentation at Baptist Health South Florida. Joint
13 Supp. to RJN at 7; RJN Ex. 14 at 208; see, e.g., *Osheroff*, 776 F.3d at 813.

14 Moreover, Becker's Hospital Review "features up-to-date business and legal news
15 and analysis relating to hospitals and health systems." See *About Becker's Hospital*
16 *Review and Becker's Healthcare*, Becker's Hosp. Rev.,

17 <https://www.beckershospitalreview.com/about/about-beckers-hospital-review.html>

18 (last visited Mar. 8, 2019). Becker's Hospital Review effectively functions as a
19 news organization for the hospital industry, which is another reason why the
20 presentation on its website qualifies as "news media." *Kraxberger*, 756 F.3d at
21 1079 (hearing testimony available on the state Public Service Commission's
22 website qualifies as "news media" because the Commission "functions as a news
23 organization for public utilities and consumers in Missouri"). In opposing
24 dismissal, Integra did not contest that RJN Exhibit 14 qualifies as "news media."

25 ICD-10 Resources on Providence hospitals' websites. RJN Exhibits 15–18

26 ¹⁸ A screenshot submitted as an exhibit to the defendant's motion to dismiss
27 listed the internet address as <http://www.scettf.org/pages/companyAB.htm>. *Green*,
28 843 F. Supp. 2d at 32 n.9.

1 are “Documentation Tips” documents created by JATA and posted on the websites
2 of two Providence hospitals. RJN Exs. 15–18 at 256–267; Joint Supp. to RJN at 8–
3 9. RJN Exhibit 20 is a YouTube video of a training that JATA conducted for
4 Providence physicians during the transition from ICD-9 codes to ICD-10 codes.
5 The video can be accessed directly through the websites of three Providence
6 hospitals. RJN Ex. 20 at 275–277; Joint Supp. to RJN at 8–9. In opposing
7 dismissal, Integra did not contest that RJN Exhibit 20 qualifies as “news media.”

8 All four of these webpages and the online video are “news media” for
9 purposes of the public disclosure bar. Just like in *Osheroff*, these internet sources
10 are readily accessible on multiple Providence hospitals’ websites through only a
11 few clicks, Joint Supp. to RJN at 9–12, and they all provide information about
12 coding medical conditions, RJN Exs. 15–18 at 256–267; RJN Ex. 20 at 275–277.
13 *Osheroff*, 776 F.3d at 813 (medical clinics’ publicly available websites that were
14 “intended to disseminate information” were “news media”). Indeed, courts
15 regularly find that websites of businesses and non-profit entities qualify as “news
16 media” when they can be accessed by the public and disseminate information. See
17 *Cherwenka*, 2018 WL 2069026, at *7 (defendant’s website was news media
18 because it was “publicly available” and “intended to disseminate information”
19 (internal quotation marks omitted); *Staples, Inc.*, 932 F. Supp. 2d at 40 (shipping
20 data available on private company’s website qualified as “news media”); *Repko*,
21 2011 WL 3875987 at *7–8 (websites of two non-profits and two businesses were
22 “news media” because they were “available to anyone with an internet connection”
23 and served the purpose of providing “access to information”).

24 Integra argued in its Opposition to Defendants’ motions to dismiss that the
25 “Documentation Tips” on Providence’s website (RJN Exs. 15–18 at 256–67) are
26 not “news media” because they are available on an “internal webpage[]” for one of
27 Providence’s hospitals and that markings on the slides and the webpage suggest
28 confidentiality. Opp. at 28. But the single unpublished, out-of-circuit case Integra

1 cites in support of this proposition found only that an internal newsletter, which
2 could only be accessed through archives, was not “news media.” *U.S. ex rel.*
3 *Liotine v. CDW Gov’t, Inc.*, 2009 WL 3156704, at *6 n.5 (S.D. Ill. Sept. 29, 2009).
4 All four of the “Documentation Tips” materials, which convey information that
5 Integra parrots in the SAC, are available to anyone with access to the internet.
6 Further, the fact that these webpages may have been “directed to a select
7 audience”—Providence medical staff—“does not detract from [their] ready
8 accessibility.” *Green*, 843 F. Supp. 2d at 33 (internal quotation marks omitted).
9 And Defendants have found no court that has suggested a confidentiality marking
10 on a document publicly available on the internet would prevent it from triggering
11 the public disclosure bar.

12 Newsletter on Swedish/Edmonds hospital’s website. RJN Exhibit 19 is the
13 June 2011 issue of *Vital Signs*, a monthly newsletter published by Defendant
14 Swedish/Edmonds that is available on its website. RJN Ex. 19 at 268–274. It
15 clearly disseminates information, and it is available to anyone with internet access.
16 This internet source also shares the traditional news media characteristic of being
17 issued periodically. *AmerisourceBergen*, 2017 WL 1209909, at *6 (blog posts and
18 newsletters published online qualified as “news media” because they were available
19 to the public and updated on a regular basis). In opposing dismissal, Integra did not
20 contest that RJN Exhibit 19 qualifies as “news media.”

21 Separately, Integra alleges this “monthly newsletter” was posted at a hospital
22 where “CDI specialists,” “medical and surgical staff,” and, presumably, any
23 member of the public who passed by, could see it. SAC ¶ 41. Even if it were not
24 posted online, surely a monthly newsletter posted in a high-traffic place like a
25 hospital constitutes “news media.”

26 Discussion Forums on ACDIS website. RJN Exhibits 21–25 are portions of
27 online discussion forums hosted by the Association of Clinical Documentation
28 Improvement Specialists (ACDIS). ACDIS members can post comments or

1 questions to the forums, but anyone can view the posts, and the excerpts in RJN
2 Exhibits 21–25 include statements about the role of nurses and doctors and JATA’s
3 clinical documentation software. RJN Ex. 21 at 278–283; RJN Ex. 22 at 284–291;
4 RJN Ex. 23 at 292–293; RJN Ex. 24 at 295–296; RJN Ex. 25 at 298–303. Because
5 the forum posts are readily accessible and disseminate information about coding,
6 they are “news media.” *E.g. Osheroﬀ*, 776 F.3d at 813. In addition to the online
7 forum, the ACDIS website contains a “news” section and a “publications” section,
8 which includes an ACDIS blog and two other online publications. *See*
9 *Publications*, ACDIS, <https://acdis.org/articles> (last visited Mar. 8, 2019). The
10 ACDIS website “functions as a news organization” for CDI professionals, just as
11 the Public Service Commission’s website functioned as a news organization for
12 public utilities and consumers. *Kraxberger*, 756 F.3d at 1079. In that same vein,
13 the ACDIS online discussion forums are akin to an advice column in a print
14 newspaper or online comments to a newspaper article, both of which are “news
15 media” public disclosures. *See Ondis*, 582 F. Supp. 2d at 217 (public disclosure bar
16 “does not require that the information appear in any particular form or section of a
17 [publication]”); *Carter*, 2015 WL 4892259, at *6 n.4 (online comment to a San
18 Diego Reader article was “news media” for purposes of the public disclosure bar).

19 Integra argued in its Opposition (at 28) that postings on the ACDIS’s online
20 discussion forum are not “news media,” citing a single out-of-circuit case that
21 found that “anonymous postings” on “informal message boards and community
22 forums” were “nothing more than vague allegations . . . without any indicia of
23 reliability or substantiation.” *U.S. ex rel. Simpson v. Bayer Corp.*, 2013 WL
24 4710587, at *7 (D.N.J. Aug. 30, 2013), *abrogated on other grounds by U.S. ex rel.*
25 *Petratos v. Genentech Inc.*, 855 F.3d 481 (3d Cir. 2007). The reasoning in this
26 decision is faulty on its face: the analysis of whether a disclosure occurred does not
27 turn on *how* reliable or substantial it was but rather on *whether* it occurred at all and
28 whether it predates the relator’s complaint. For this reason, the Ninth Circuit in

1 *Hong* rejected a relator’s argument that a website was disqualified from being
2 “news media” because it was too unreliable. 728 F. App’x at 662 (holding that
3 faculty profile on university website was “news media” even though relator argued
4 disclaimers on the website made it unreliable).¹⁹

5 In any event, the ACDIS posts Integra quoted in the SAC are not anonymous,
6 see RJN Exs. 21–25 at 278–303, and ACDIS is a well-established and reliable
7 authority for information and guidance related to clinical documentation, see
8 *ACDIS Mission Statement*, ACDIS, <https://acdis.org/membership/mission> (last
9 visited Mar. 8, 2019) (“To serve as the premier healthcare community for clinical
10 documentation specialists, providing a medium for education, professional growth,
11 program recognition, and networking.”).

12 JATA presentation on ACDIS website. Finally, RJN Exhibit 26 is a JATA
13 presentation available in full on the ACDIS website that Integra says shows JATA
14 coaching hospitals to avoid being audited. See SAC ¶ 40; RJN Ex. 26 at 304–344.
15 This internet source qualifies as “news media” for all the same reasons as the
16 ACDIS discussion forum posts, and Integra did not contest in its Opposition that
17 Exhibit 26 qualifies as “news media.”

18 Further, this educational presentation was used by a leading trade
19 organization to disseminate new information to its members at an annual
20 conference. Courts consistently hold that such materials constitute “news media,”
21 even where they are not posted online. *In re Nat. Gas Royalties Qui Tam Litig.*,
22 467 F. Supp. 2d 1117, 1155 (D. Wyo. 2006) (“trade journal essays, educational
23

24 ¹⁹ Integra’s arguments about the reliability of the ACDIS posts actually reveal
25 the flaw in its argument that the SAC plausibly pleads an FCA claim in the first
26 place. Providence Reply at 4 n.2; JATA Reply in Supp. of Mot. to Dismiss at 16,
27 ECF No. 67. As Integra argues in the public disclosure section of its brief, these
28 posts do not relate to Providence and lack “any indicia of reliability or
substantiation.” Opp. at 28. As such, Integra admits that no reasonable inferences
can be drawn from them in its favor.

1 materials, seminar papers, [and] instruction manuals . . . discussing the technical
2 aspects of gas measurement” were public disclosures); *Radcliffe*, 582 F. Supp. 2d at
3 770 (same for the Clinical Practice Guideline, the United States Pharmacopeia—
4 Dispensing Information, and the Textbook of Pain); *Kalmanovitz Charitable*
5 *Found.*, 186 F. Supp. 2d at 463 (same for scientific and scholarly works); *Colquitt*,
6 864 F. Supp. 2d at 518 (same). Where scientists look to seminars and journals to
7 stay up to date, CDI professionals turn to ACDIS presentations and materials.
8 Thus, even if not posted online, the ACDIS materials would qualify as “news
9 media,” like the seminar papers and journal articles that other courts have analyzed.

10 **III. RULE 12(b)(6) IS AN APPROPRIATE VEHICLE TO DISPOSE OF**
11 **THE SAC ON PUBLIC DISCLOSURE GROUNDS.**

12 The SAC is well suited for dismissal at the pleading stage. The SAC reflects
13 a realtor who mined publicly available data, government reports, and publicly
14 available websites to arrive at a speculative theory of fraud. Having made no claim
15 to personal knowledge of any fact alleged, offered the weakest of arguments that it
16 qualifies as an original source, and filed no opposition to the RJN, Integra has done
17 nothing that would even suggest a need for factual development or an evidentiary
18 hearing. Public disclosure and original source disputes can, and sometimes do,
19 require development of a discrete evidentiary record for resolution on a motion for
20 summary judgment. Not so here. The SAC as pled and the judicial notice rules
21 enable Defendants and the Court to avoid unnecessary discovery.

22 It is well-established that on a motion to dismiss, a court may look beyond
23 the pleadings at “documents incorporated into the complaint by reference, and
24 matters of which a court may take judicial notice.” *Tellabs, Inc. v. Makor Issues &*
25 *Rights, Ltd.*, 551 U.S. 308, 322 (2007). “Judicial notice is appropriate for facts ‘not
26 subject to reasonable dispute’ that are generally known or are capable of accurate
27 and ready determination by resort to ‘sources whose accuracy cannot reasonably be
28 questioned.’ ” *Ardolino v. Mannkind Corp.*, 2016 WL 4505172, at *4 (C.D. Cal.

1 Aug. 23, 2016) (quoting Fed. R. Evid. 201(b)). A court “*must* take judicial notice”
2 where requested by a party and “supplied with the necessary information.” Fed. R.
3 Evid. 201(c)(2) (emphasis added).

4 In the context of the FCA’s public disclosure bar, the Ninth Circuit has
5 specifically confirmed that a court may take judicial notice of documents “ ‘not for
6 the truth of the information’ contained within them, but ‘merely to show that [the]
7 information was publicly available.’ ” *Hong*, 728 F. App’x at 661. That is exactly
8 what Defendants requested here: that this Court take judicial notice of the public
9 availability of internet materials that mirror Integra’s allegations (RJN Exs. 13–26).
10 See RJN at 8–9. Integra does not dispute the authenticity of these websites or the
11 fact that the content of these websites (as reflected in RJN Exhibits 13–26) was
12 publicly available on these sites. Integra even specifically acknowledges and relies
13 on the existence of these websites and the content that was publicly disclosed in its
14 Opposition. When the *fact of these documents’ public availability* is not disputed
15 by the parties or subject to reasonable dispute, as is the case here, the court can take
16 judicial notice of that fact. *Hong*, 728 F. App’x at 661 (citing *Daniels-Hall v. Nat’l*
17 *Educ. Ass’n*, 629 F.3d 992, 998–99 (9th Cir. 2010)).

18 This is the very approach taken by the district court in *Hong* and
19 subsequently approved of by the Ninth Circuit. In the district court, the defendant
20 requested judicial notice of seven exhibits “not for the truth of the information
21 stated, but merely to show that the information was publicly available.” *Hong*,
22 2016 WL 8929246, at *3 (internal quotation marks and brackets omitted). The
23 court took judicial notice of several online sources, including two university
24 websites, for this purpose, noting that “courts in this circuit have routinely taken
25 judicial notice of [internet] content.” *Id.* On appeal, the Ninth Circuit endorsed this
26 approach by affirming both the decision to take judicial notice of the documents
27 submitted to demonstrate public disclosure and the dismissal under the public
28 disclosure bar (including one of the internet source’s status as “news media”).

1 *Hong*, 728 F. App'x 661. Other courts, including the *Mateski* court, routinely
2 conclude that internet sources are “news media” when deciding motions to dismiss
3 under Rule 12 based on the public disclosure bar. *E.g.*, *Mateski*, 816 F.3d at 568;
4 *Osheroff*, 776 F.3d at 813; *Kraxberger*, 756 F.3d at 1079; *Cherwenka*, 2018 WL
5 2069026, at *7; *Hill*, 2017 WL 7837306, at *1; *AmerisourceBergen*, 2017 WL
6 1209909, at *6; *Carter*, 2015 WL 4892259, at *6 n.4; *Repko*, 2011 WL 3875987, at
7 *7–8.

8 Making matters even clearer in this case, the internet disclosures of JATA's
9 business practices are also judicially noticeable because Integra effectively
10 incorporated them by reference in the SAC. This Court has consistently recognized
11 that documents incorporated by reference in a complaint are a proper subject of
12 judicial notice. “The incorporation by reference doctrine permits the court to take
13 into account documents whose contents are alleged in a complaint and whose
14 authenticity no party questions, but which are not physically attached to the
15 plaintiff's pleading.” *Oaktree Principal Fund V, LP v. Warburg Pincus LLC*, 2016
16 WL 6782768, at *8 (C.D. Cal. Aug. 9, 2016) (Gutierrez, J.) (internal quotation
17 marks and citation omitted). Integra does not dispute that the websites Defendants
18 identified were the sources of the disclosures quoted in the SAC.

19 The websites are public disclosures through the “news media” that speak for
20 themselves. No further fact development is necessary to dispose of the SAC.

21 CONCLUSION

22 For the foregoing reasons, Defendants respectfully request that the Court find
23 Integra's reliance on public information triggered the public disclosure bar and
24 dismiss the SAC without leave to amend.

25 Respectfully submitted,

26
27 Dated: March 8, 2019

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Dated: March 8, 2019

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Attestation Regarding Signatures

I, Jessica L. Ellsworth, attest that all other signatures listed, and on whose behalf this filing is submitted, concur in the filing's content and have authorized the filing.

Dated: March 8, 2019

/s/ Jessica L. Ellsworth
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CERTIFICATE OF SERVICE

At the time of service, I was over 18 years of age and not a party to this action. On March 8, 2019, I served on the United States by electronic mail a true and correct copy of Defendants' Joint Supplemental Brief In Support Of Their Motions To Dismiss The Second Amended Complaint. Pursuant to Local Rule 5-3.2 and the Notices of Electronic Filing, all other parties were served by the CM/ECF system.

/s/ Sarah Marberg
Sarah Marberg