

## Northern District of California

Civil Action No. C 15-05631 KAW

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. C 15-05631 KAW

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_.

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
 \_\_\_\_\_, a person of suitable age and discretion who resides there,  
 on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
 designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the summons unexecuted because \_\_\_\_\_; or

☐ Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

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SEALED  
BY COURT ORDER

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

11 UNITED STATES OF AMERICA EX REL  
12 TOMIYA GAINES,

13 Plaintiff,

14 v.

15 STANFORD HEALTH CARE and  
16 UNIVERSITY HEALTHCARE ALLIANCE,

17 Defendants.

) Case No.

) FILED UNDER SEAL PURSUANT TO  
31 U.S.C. §3730(b)(2)

) DO NOT PLACE IN PRESS BOX  
) DO NOT ENTER ON PACER

) COMPLAINT FOR DAMAGES UNDER  
THE FEDERAL FALSE CLAIMS ACT

) DEMAND FOR JURY TRIAL

COMPLAINT FOR DAMAGES UNDER THE FEDERAL FALSE CLAIMS ACT

FILED  
2015 DEC -9 P 3:43  
SUSAN Y. SOONG  
CLERK, US DISTRICT COURT  
NO. DIST. OF CA,

KAW

CV 15 5631

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1 Qui Tam plaintiff Tomiya Gaines ("Relator"), through her attorneys, Robbins Arroyo LLP,  
2 brings this action on behalf of the United States of America, under the False Claims Act, 31 U.S.C.  
3 §3729, *et seq.* ("FCA"), based upon personal knowledge, relevant documents, and information and  
4 belief, and in support thereof, states and alleges as follows:

5 **I. NATURE OF THIS ACTION**

6 1. This action is based on false claims being submitted by defendants University  
7 HealthCare Alliance ("UHA") and its greater than 50% owner, Stanford Health Care ("SHC")  
8 (collectively, "Defendants"). The false claims were submitted by Defendants to the United States of  
9 America, through Medicare, for undocumented medical procedures and services, resulting in  
10 substantial damages to the United States of America.

11 2. More specifically, UHA habitually submits bills to Medicare for various procedures  
12 and services, despite a gross lack of *required* documentation evincing that that such billed  
13 procedures and services were actually rendered. UHA's improper billing has caused Medicare to  
14 wrongfully pay UHA and SHC millions of dollars in Medicare payments.

15 3. But for Defendants' false billing, UHA and SHC would have never received the  
16 millions of dollars in payments that they did from the government.

17 4. Defendants, by their unlawful conduct of knowingly submitting false claims to the  
18 government, for payment of government funds, have violated the FCA, and are liable to the  
19 government for treble damages and penalties associated with the false claims alleged herein.

20 **II. JURISDICTION AND VENUE**

21 5. This is an action to recover damages and civil penalties on behalf of the United  
22 States of America arising out of false claims, transactions, and other related acts of Defendants, and  
23 is brought pursuant to 31 U.S.C. §§3729-3733, more popularly known as the FCA, through Relator,  
24 pursuant to 31 U.S.C. §3730(b), for and on behalf of the United States of America.

25 6. Jurisdiction of the Court is founded upon 28 U.S.C. §§1331 and 1345. The claims  
26 set forth herein arise under and are founded upon federal law. Relator is aware of no jurisdictional  
27 bars to this action.

28 7. Personal jurisdiction over Defendants is proper in this Court pursuant to 31 U.S.C.

1 §3732(a), which provides that any action under 31 U.S.C. §3730 may be brought in any district in  
2 which the defendants can be found, reside, transact business, or in which any act proscribed by 31  
3 U.S.C. §3729 occurred.

4 8. Venue is proper in this District pursuant to 31 U.S.C. §3732(a) and 28 U.S.C.  
5 §1391(b). Defendant UHA is headquartered in this District and both Defendants transact business in  
6 this District, including the conduct which gives rise to the fraudulent claims set forth herein.

### 7 **III. INTRADISTRICT ASSIGNMENT**

8 9. Pursuant to Civil Local Rule 3-2(c) and (d), assignment of this case to the San  
9 Francisco Division of the United States District Court for the Northern District of California is  
10 proper because a substantial part of the events and omissions giving rise to Relator's claims  
11 occurred within the San Francisco Division.

### 12 **IV. PARTIES**

13 10. *The United States of America* is the real plaintiff in interest with respect to the  
14 claims asserted herein. The Medicare program is administered and supervised by the Centers for  
15 Medicare & Medicaid Services ("CMS"), a division of the U.S. Department of Health & Human  
16 Services ("HHS").

17 11. *Relator* is currently employed by UHA as a Coding Quality Coordinator, and has  
18 been employed in that position since about April 2015. Relator's personal knowledge, beliefs, and  
19 experiences, based mainly on her employment at UHA, are consistent with the allegations discussed  
20 herein.

21 12. *Defendant SHC*, formerly known as Stanford Hospital and Clinics, is a non-profit  
22 public benefit California corporation and more than 50% owner of defendant UHA. Defendant  
23 SHC has administrative offices located at 300 Pasteur Drive, Stanford, California.

24 13. *Defendant UHA* is a non-profit public benefit California corporation with  
25 administrative offices located at 855 Oak Grove Avenue, Suite 100, Menlo Park, California. It is  
26 primarily owned and controlled by defendant SHC. Defendant UHA owns and operates the  
27 administrative and logistical aspects of a network of board-certified primary care and specialty  
28 physicians, including insurance, human resources, payroll, and appointment scheduling. Each year,

1 defendant UHA submits more than \$30 million worth of claims to Medicare on behalf of its  
2 network of clients.

3 **V. BACKGROUND ALLEGATIONS**

4 **A. The FCA—Generally**

5 14. The FCA prohibits several variations of fraud on the government.

6 15. Among other things, the FCA prohibits knowingly presenting, or causing to be  
7 presented, to the federal government a false or fraudulent claim for payment or approval, and  
8 conspiring to defraud the government by getting a false or fraudulent claim allowed or paid. 31  
9 U.S.C. §§3729(a)(1)(A).

10 16. Additionally, the FCA prohibits knowingly making or using, or causing to be made  
11 or used, a false or fraudulent record or statement to get a false or fraudulent claim paid or approved  
12 by the federal government. 31 U.S.C. §3729(a)(1)(B).

13 17. The FCA defines "knowing" as acting with a deliberate ignorance of, or reckless  
14 disregard of, the truth or falsity of the information. 31 U.S.C. §3729(b).

15 18. The statute allows any person having information about an FCA violation to bring an  
16 action on behalf of the United States of America and to share in any recovery obtained. It requires  
17 that the complaint be filed under seal for a minimum of sixty days (without service on the  
18 defendants during that time) to allow the government time to conduct its own investigation and to  
19 determine whether to join the suit.

20 19. Any person who violates the FCA is liable for a civil penalty of not less than \$5,000,  
21 up to \$11,000, for each violation, plus three times the loss sustained by the United States of  
22 America. 31 U.S.C. §3729(a).

23 **B. Medicare and Current Procedural Terminology Codes**

24 20. The current procedural terminology ("CPT") code set is a medical code maintained  
25 by the American Medical Association ("AMA") through the CPT Editorial Panel. The CPT code  
26 set describes medical, surgical, and diagnostic services, and is designed to communicate uniform  
27 information about medical services and procedures among physicians, coders, patients,  
28 accreditation organizations, and payers for administrative, financial, and analytical purposes.



1        21. Each year Medicare publishes a Physician's Fee Schedule in which all of the CPT  
2 codes are listed, together with the reimbursement Medicare allows for each code. CPT codes are  
3 billed to Medicare by entering the code number on a claim form.

4        22. As stated in the Medicare Claims Processing Manual, "[p]roper coding is necessary  
5 on Medicare claims because codes are generally used in determining coverage and payment  
6 amounts."

7        **C. Documentation Requirements for Medicare Billing**

8        23. As noted in CMS, Medicare Learning Network, Evaluation and Management  
9 Services Guide, Providers that submit bills to Medicare for payment "must ensure that medical  
10 record documentation supports the level of service reported." As CMS succinctly states, "[i]f it isn't  
11 documented, it hasn't been done."

12        24. Providers cannot submit bills to Medicare for services when there is no record that  
13 such services were actually rendered.

14        **D. The FCA Prohibits Improper Medicare Billing**

15        25. Medicare analyzes whether the disease or symptoms warrant the test or procedures  
16 billed, as Medicare has found that some providers and billing companies bill for services which  
17 were not medically necessary or never actually rendered in order to illegally maximize  
18 reimbursement.

19        26. In connection with Medicare billing, the FCA expressly prohibits knowingly  
20 submitting false or fraudulent claims for payment or approval.

21        **VI. RELEVANT FACTUAL BACKGROUND**

22        27. UHA is a company that owns and operates the administrative and logistical aspects  
23 of a network of board-certified primary care and specialty physicians, including insurance, human  
24 resources, payroll, and appointment scheduling.

25        28. During Relator's short tenure as Coding Quality Coordinator at UHA (hired since  
26 about April 2015), she was exposed to multiple improper UHA billing practices with respect to  
27 several of the primary medical groups at UHA.



1           **A.     UHA's Improper Stress Echo Cardiogram Test Billing**

2           29.     UHA is systematically wrongfully billing Medicare for complete stress  
3 echocardiogram tests (CPT code 93351) when the lack of documentation only supports a limited  
4 Stress Echocardiogram test (CPT code 93308).

5           30.     Stress echocardiography is a test that uses ultrasound imaging to show how well a  
6 heart muscle is working to pump blood to the body. It is mainly used to detect a decrease in blood  
7 flow to the heart from narrowing in the coronary arteries.

8           31.     ***CPT Code 93351*** is reserved for a stress echocardiogram which is performed with a  
9 ***complete cardiovascular stress test***. A complete cardiovascular stress test requires continuous  
10 electrocardiographic monitoring, supervision, interpretation, and report by a physician or other  
11 qualified health care professional, and must include examination of the left and right atria, left and  
12 right ventricles, the aortic, mitral, and tricuspid valves, the pericardium, and adjacent portions of the  
13 aorta. The charge for CPT code 93351 is \$330.18.

14          32.     ***CPT Code 93308*** is reserved for a follow-up ***or limited echocardiographic study***, an  
15 examination that does not evaluate or document the attempt to evaluate all the structures that  
16 comprise the complete echocardiographic exam. This is typically limited to, or performed in  
17 follow-up of, a focused clinical concern. The charge for CPT code 93308 is \$154.26.

18          33.     During Relator's tenure at UHA, she discovered that UHA regularly bills for  
19 complete stress tests when documents only support that limited testing was performed. Specifically,  
20 UHA regularly bills for stress tests under CPT code 93351, representing that a complete stress test  
21 was performed, when documentation ***does not*** support that a complete stress test was actually  
22 completed. In particular, documentation does not support that there was an evaluation of the left  
23 and right atria, left and right ventricles, the aortic, mitral, and tricuspid valves, the pericardium, and  
24 adjacent portions of the aorta.

25          34.     These improper CPT code 93351 charges were billed to Medicare at the rate of  
26 \$330.18 for each test, or \$175.92 more than the charge for CPT code 93308 (limited  
27 echocardiographic study).  
28

**B. UHA's Improper Critical Care Billing**

35. UHA regularly submits false bills to Medicare for critical care visits.

36. The AMA requires that "[t]ime spent with the individual patient [for critical services] should be recorded in the patient's record."

37. CPT codes 99291 and 99292 are used to report the total duration of time spent in provision of critical care services to a critically ill or critically injured patient.

38. CPT code 99291 is used to report the first thirty to seventy-four minutes of critical care on a given date, and is billed at a non-facility price of \$308.08.

39. CPT code 99292 is used to report additional block(s) of time, of up to thirty minutes each beyond the first seventy-four minutes, and is billed at a non-facility price of \$135.08 per additional thirty minutes.

40. UHA regularly submits bills to Medicare under both of the above codes despite a gross lack of documentation in the patients' records concerning the patients' time spent in critical care. Specifically, the patients' records often contain *no documentation whatsoever* concerning the patients' purported time spent in critical care.

41. Instead, UHA simply receives a list of billing codes from its members, and UHA coders are instructed to submit the codes for Medicare billing without verifying the services (which would be impossible in any event given the lack of supporting documentation).

42. Thus, UHA knowingly bills false claims for critical care. As a result, UHA has wrongfully collected countless charges from Medicare billed under CPT codes 99291 and 99292, with fees of \$308.08 and \$135.08, respectively.

**C. Additional Concerns**

43. The above examples merely highlight what Relator believes to be a pattern and practice of improper billing at UHA.

44. During Relator's tenure, she witnessed multiple additional questionable billing examples suggesting that UHA's primary focus is on creating a system to ensure Medicare payment, rather than on properly coding per AMA guidelines.

45. As an initial matter, UHA's coding department was understaffed when Relator began

1 working at UHA, and staffing problems dramatically increased during Relator's tenure. Although  
2 UHA took on numerous additional clients shortly after Relator was hired, UHA refused to hire  
3 additional coders to adequately handle the skyrocketing workload. Instead management pressured  
4 coders to speed up the coding process at the expense of accuracy, and further specifically instructed  
5 coders to ignore serious billing concerns.

6 46. Whenever lack of documentation to support billing was brought to managements'  
7 attention, the response was almost always along the lines of "just bill it."

8 47. When patient service orders lacked required physician signatures to authenticate the  
9 document, in clear violation of billing requirements, coders were instructed to bill it anyway.

10 48. When procedures did not fit into billable Medicare categories, coders were instructed  
11 to change the codes to ensure Medicare payment.

## 12 **VII. DAMAGES CAUSED BY DEFENDANTS' FALSE CLAIMS**

13 49. As detailed above, although UHA has never publicly disclosed how much of its  
14 revenue is derived from Medicare, conservative estimates suggest that UHA earns well over \$30  
15 million a year in revenue from Medicare.

16 50. Relator believes that UHA's billing violations are habitual and rampant throughout  
17 UHA, comprising a substantial portion of the tens of millions of dollars that UHA bills Medicare  
18 each year.

## 19 **VIII. COUNT I - FCA 31 U.S.C. §3729(a)(1)(A)**

20 51. Relator incorporates by reference and realleges each and every allegation contained  
21 above, as though fully set forth herein.

22 52. This is a claim for treble damages and penalties under the FCA, 31 U.S.C. §§3729, *et*  
23 *seq.*, as amended.

24 53. By virtue of the acts set forth above, Defendants presented or caused to be presented,  
25 false or fraudulent claims for payment or approval to the U.S. government in violation of 31 U.S.C.  
26 §3729(a)(1).

27 54. The United States, unaware of the falsity of the claims, paid and continues to pay  
28 claims that would not be paid but for Defendants' unlawful conduct.

1        55. As a result of the Defendants' acts, the United States of America has been damaged,  
2 and continues to be damaged, in a substantial amount to be determined at trial.

3 **IX. COUNT II - FCA 31 U.S.C. §3729(a)(1)(B)**

4        56. Relator incorporates by reference and realleges each and every allegation contained  
5 above, as though fully set forth herein.

6        57. This is a claim for treble damages and penalties under the FCA, 31 U.S.C. §3729, *et*  
7 *seq.*, as amended.

8        58. By virtue of the acts set forth above, Defendants have knowingly made, used, or  
9 caused to be made or used, false or fraudulent records and statements, and omitted material facts, to  
10 get false and fraudulent claims paid or approved, within the meaning of 31 U.S.C. §3729(a)(1)(B).

11        59. The United States of America, unaware of the falsity of the records, statements, and  
12 claims made or caused to be made by the Defendants, paid and continues to pay claims that would  
13 not be paid but for Defendants' unlawful conduct.

14        60. As a result of the Defendants' acts, the United States of America has been damaged,  
15 and continues to be damaged, in a substantial amount to be determined at trial.

16 **X. PRAYER FOR RELIEF**

17        WHEREFORE, Relator, on behalf of the United States of America, respectfully requests this  
18 Court to enter judgment for Relator, and on behalf of the United States of America, and against  
19 Defendants, on each Count of this Complaint, and to impose judgment against the Defendants and  
20 in favor of Relator, on behalf of the United States of America, as follows:

21        (a) for the United States of America to be awarded damages in an amount equal to three  
22 times the loss sustained by the United States of America because of false claims and fraud alleged  
23 herein, as the FCA provides;

24        (b) for civil penalties of statutorily-determined amounts for each and every false claim  
25 that Defendants presented to the United States of America and/or its representatives;

26        (c) for an award to Relator for reasonable expenses, attorneys' fees, and costs incurred in  
27 connection with this action;

28        (d) for Relator to be awarded the maximum amount allowed, pursuant to the FCA; and

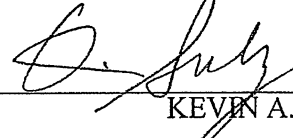
(e) that this Court award such other and further relief as it deemed proper.

**XI. DEMAND FOR JURY TRIAL**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Relator hereby demands a trial by jury.

Dated: December 9, 2015

ROBBINS ARROYO LLP  
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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**OAKLAND DIVISION**

UNITED STATES OF AMERICA *ex rel.*  
TOMIYA GAINES,

Plaintiff

v.

STANFORD HEALTH CARE and  
UNIVERSITY HEALTHCARE ALLIANCE,

Defendants.

Case No. 4:15-cv-05631-RS

**CERTIFICATE OF SERVICE**

Judge: Hon. Richard Seeborg

1 I, Kevin A. Seely, hereby certify that on March 6, 2017, I sent a copy of the following  
2 document:

3 DEFENDANTS' SUBMISSION IN ADVANCE OF MARCH 9, 2017 CASE  
4 MANAGEMENT ORDER

5 And on March 7, 2017, I sent a copy of the following document:

6 ORDER DISMISSING ACTION;

7 by depositing same via U.S. Mail, postage paid, to the following:

8 Tomiya Gaines  
9 10940 Trinity Parkway, C196  
Stockton, CA 95219

10 I certify that I am a member of the Bar of the United States District Court, Northern  
11 District of California.

12 I certify under penalty of perjury under the laws of the United States of America that the  
13 foregoing is true and correct.

14 Executed at San Diego, California, on March 9, 2017.

15 \_\_\_\_\_  
/s/ Kevin A. Seely

16 Kevin A. Seely  
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SEALED BY ORDER  
OF THE COURT

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AUG - 3 2016

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NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND

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AUG -5 2016

SUSAN Y. SOONG  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

UNITED STATES OF AMERICA *ex rel.*  
TOMIYA GAINES,

Plaintiffs,

v.

STANFORD HEALTH CARE, et al.,  
Defendants.

Case No. C 15-05631 KAW

UNITED STATES' NOTICE OF  
ELECTION TO DECLINE  
INTERVENTION; ~~PROPOSED~~  
ORDER TO UNSEAL

FILED UNDER SEAL

Pursuant to the False Claims Act, 31 U.S.C. § 3730(b)(4)(B), the United States notifies the Court of its decision not to intervene in this action.

Although the United States declines to intervene, it respectfully refers the Court to 31 U.S.C. § 3730(b)(1), which allows the relator to maintain the action in the name of the United States; providing, however, that the "action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting." *Id.* The United States Court of Appeals for the Ninth Circuit has held that, notwithstanding this language, the United States only has the right to a hearing when it objects to a settlement or dismissal of the

1 action. *U.S. ex rel. Green v. Northrop Corp.*, 59 F.3d 953, 959 (9th Cir. 1995); *U.S. ex rel.*  
 2 *Killingsworth v. Northrop Corp.*, 25 F.3d 715, 723-25 (9th Cir. 1994).

3 Therefore, the United States requests that, should either the relator or the defendants  
 4 propose that this action be dismissed, settled, or otherwise discontinued, this Court provide the  
 5 United States with notice and an opportunity to be heard before ruling or granting its approval.

6 Furthermore, pursuant to 31 U.S.C. § 3730(c)(3), the United States requests that all  
 7 pleadings filed in this action be served upon the United States. The United States also requests  
 8 that orders issued by the Court be sent to the government's counsel. The United States reserves  
 9 its rights to order any deposition transcripts and to intervene in this action, for good cause, at a  
 10 later date, and to seek dismissal of the relator's action or claim. See 31 U.S.C. § 3730(c)(2), (3).  
 11 The United States also requests that it be served with all notices of appeal.  
 12

13 Finally, we request that the Court unseal: (1) relator's Complaint; (2) the summons, if  
 14 any; (3) the scheduling order; (4) this Notice of Election to Decline Intervention, with (Proposed)  
 15 Order to Unseal; and (5) all other matters occurring in this action after the date the Court enters  
 16 the unsealing order. We request that all other contents of the Court's file in this matter  
 17 (including, but not limited to, any applications filed by the United States for extensions of the  
 18 sixty-day investigative period, any applications for partial lifting of the seal, and any orders  
 19 previously entered in this matter) remain under seal and not be made public or served upon  
 20 defendants.  
 21  
 22  
 23

24 Respectfully submitted,

25 BRIAN J. STRETCH  
 United States Attorney

26 Dated: August 3, 2016

27 By:



28 SARA WINSLOW  
 Assistant United States Attorney  
 Attorneys for the United States of America

~~PROPOSED~~ ORDER TO UNSEAL

The United States having declined to intervene in this action pursuant to the False Claims Act, 31 U.S.C. § 3730(b)(4)(B), the Court rules as follows.

IT IS HEREBY ORDERED that:

1. All current contents of the Court's file in this action shall remain under seal and not be made public or served upon the defendants, except for (1) relator's Complaint; (2) the summons, if any; (3) the scheduling order; (4) this Order; and (5) the accompanying United States' Notice of Election to Decline Intervention, which are hereby unsealed.

2. The relator shall serve the Complaint upon the defendants.

3. The relator shall serve this Order and the accompanying Joint Notice of Election to Decline Intervention upon the defendants after service of the Complaint.

4. The seal shall be lifted as to all other matters occurring in this action after the date of this Order.

5. The parties shall serve all pleadings and motions filed in this action, including supporting memoranda, upon the United States, as provided for in 31 U.S.C. § 3730(c)(3). The United States may order any deposition transcripts and is entitled to intervene in this action, for good cause, at any time.

6. The parties will provide the United States a copy of the notice or petition initiating any appeal and each paper, including briefs, filed in the appeal.

7. All orders of this Court shall be sent to the United States.

8. Should the relator or the defendant(s) propose that this action be dismissed, settled, or otherwise discontinued, the Court will provide the United States with notice and an opportunity to be heard before ruling or granting its approval.

IT IS SO ORDERED.

Dated: 8/5/16



KANDIS A. WESTMORE  
United States Magistrate Judge



1 **CERTIFICATE OF SERVICE**

2 The undersigned hereby certifies that she is an employee of the Office of the United States Attorney for  
 3 the Northern District of California and is a person of such age and discretion to be competent to serve  
 4 papers. The undersigned further certifies that she is causing a copy of the following to be served this  
 5 date upon each of the persons indicated below at the address(es) shown::

6 **UNITED STATES' NOTICE OF ELECTION TO DECLINE INTERVENTION; [PROPOSED]**  
 7 **ORDER TO UNSEAL**

8 United States of America ex rel. Tomiya Gaines, v. Stanford Health Care et al  
 9 C 15-05631 KAW (Under Seal)

10 Kevin A. Seely  
 11 Robbins Arroyo LLP  
 12 600 B St., Suite 1900  
 13 San Diego CA 92101

13 ☒ **BY FIRST CLASS MAIL** by placing a true copy thereof in a sealed envelope with  
 14 postage thereon fully prepaid in the designated area for outgoing U.S. mail in accordance  
 15 with this office's practice.

16 **CERTIFIED MAIL (#)** by placing such envelope(s) with postage thereon fully prepaid  
 17 in the designated area for outgoing U.S. mail in accordance with this office's practice.

18 **BY PERSONAL SERVICE (BY MESSENGER):** I caused such envelope to be  
 19 delivered by hand to the person or offices of each addressee above.

20 **BY FACSIMILE (FAX):** I caused each such document to be sent by facsimile to the  
 21 person or offices of each addressee above.

22 **BY E-MAIL:** I caused each such document to be sent by e-mail to the person or offices  
 23 of each address above

24 **BY FEDERAL EXPRESS**

25 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
 26 true and correct. Executed August 3, 2016 at San Francisco, California

27   
 28 KATHY TERRY  
 Legal Assistant

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA ex rel.  
TOMIYA GAINES,

No. C 15-5631 KAW

Plaintiff(s),

CERTIFICATE OF SERVICE

v.

STANFORD HEALTH CARE, ET AL,

Defendant(s).


I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on August 5, 2016, I SERVED a true and correct copy of the attached, by placing said copy in a postage paid envelope addressed to the person(s) listed below, by depositing said envelope in the U.S. Mail; or by placing said copy into an inter-office delivery receptacle located in the Office of the Clerk.

Kevin Andrew Seely  
Robbins Arroyo LLP  
600 B Street, Suite 1900  
San Diego, CA 92101

Sara Winslow  
Assistant US Attorney  
450 Golden Gate Ave., Box 36055  
San Francisco, CA 94102

SUSAN Y. SOONG, CLERK

BY:   
Susan Imbriani, Courtroom Deputy

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

UNDER SEAL,

Plaintiff,

v.

UNDER SEAL,

Defendant.

Case No. [15-cv-05631-KAW](#)

**ORDER SETTING INITIAL CASE  
MANAGEMENT CONFERENCE  
AND ADR DEADLINES**

IT IS HEREBY ORDERED that this action is assigned to the Honorable Kandis A. Westmore . When serving the complaint or notice of removal, the plaintiff or removing defendant must serve on all other parties a copy of this order, the Notice of Assignment of Case to a United States Magistrate Judge for Trial, and all other documents specified in [Civil Local Rule 4-2](#). Plaintiffs or removing parties must file a consent or declination to proceed before a magistrate judge within 14 days of the filing of the complaint or the removal. All other parties must file a consent or declination within 14 days of appearing in the case. All parties who have made an appearance must file a consent or declination within 7 days of the filing of a dispositive motion or the case will be reassigned to a district court judge. Counsel must comply with the case schedule listed below unless the Court otherwise orders.

IT IS FURTHER ORDERED that this action is assigned to the Alternative Dispute Resolution (ADR) Multi-Option Program governed by [ADR Local Rule 3](#). Counsel and clients shall familiarize themselves with that rule and with the material entitled "Dispute Resolution Procedures in the Northern District of California" on the Court ADR Internet site at <http://www.cand.uscourts.gov/adr>. A limited number of printed copies are available from the Clerk's Office for parties in cases not subject to the court's Electronic Case Filing program (ECF).

IT IS FURTHER ORDERED that plaintiff or removing defendant serve upon all parties

the brochure entitled "Consenting To A Magistrate Judge's Jurisdiction In The Northern District Of California", additional copies of which can be downloaded from the court's Internet website:

<http://www.cand.uscourts.gov>.

#### CASE SCHEDULE – ADR MULTI-OPTION PROGRAM

| Date      | Event   | Governing Rule   |
|-----------|---|--|
| 12/9/2015 | Complaint Filed   |  |
| 2/16/2016 | *Last day to:<br>• meet and confer re: initial disclosures, early settlement, ADR process selection, and discovery plan   | <a href="#">FRCivP 26(f) &amp; ADR L.R.3-5</a>           |
|           | • file ADR Certification signed by Parties and Counsel (form available at <a href="http://www.cand.uscourts.gov">http://www.cand.uscourts.gov</a> )   | <a href="#">Civil L.R. 16-8(b) &amp; ADR L.R. 3-5(b)</a> |
|           | • file either Stipulation to ADR Process or Notice of Need for ADR Phone Conference<br><a href="http://www.adr.cand.uscourts.gov">http://www.adr.cand.uscourts.gov</a><br>(form available at <a href="http://www.cand.uscourts.gov">http://www.cand.uscourts.gov</a> )  | <a href="#">Civil L.R. 16-8(c) &amp; ADR L.R. 3-5(b)</a> |
| 3/1/2016  | Last day to file Rule 26(f) Report, complete initial disclosures or state objection in Rule 26(f) Report and file Case Management Statement per Standing Order re Contents of Joint Case Management Statement<br>(also available at <a href="http://www.cand.uscourts.gov">http://www.cand.uscourts.gov</a> ) | <a href="#">FRCivP 26(a) (1) Civil L.R. 16-9</a>         |
| 3/8/2016  | INITIAL CASE MANAGEMENT CONFERENCE (CMC) at 1:30 PM in:<br><br>Ronald Dellums Federal Building<br>1301 Clay Street<br>Oakland, CA 94612   | <a href="#">Civil L.R. 16-10</a>                         |

\* If the Initial Case Management Conference is continued, the other deadlines are continued accordingly.



ROBBINS ARROYO LLP  
KEVIN A. SEELY (199982)  
600 B Street, Suite 1900  
San Diego, CA 92101  
Telephone: (619) 525-3990  
Facsimile: (619) 525-3991  
kseely@robbinsarroyo.com

Attorneys for Qui Tam Plaintiff

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**OAKLAND DIVISION**

UNITED STATES OF AMERICA *ex rel.*  
TOMIYA GAINES,

Plaintiff

v.

STANFORD HEALTH CARE and  
UNIVERSITY HEALTHCARE ALLIANCE,  
Defendants.

) Case No. C 15-05631 KAW

) **NOTICE OF MOTION AND**  
) **MOTION OF ROBBINS ARROYO LLP**  
) **TO WITHDRAW AS COUNSEL;**  
) **MEMORANDUM OF POINTS AND**  
) **AUTHORITIES IN SUPPORT**

) Magistrate Judge: Hon. Kandis A. Westmore  
) Hearing Date: November 17, 2016  
) Hearing Time: 11:00 a.m.  
) **ORAL ARGUMENT WAIVED**

**NOTICE OF MOTION AND MOTION**

TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD

PLEASE TAKE NOTICE that on November 17, 2016, at 11:00 a.m., or as soon thereafter as the matter may be heard, in the Courtroom of the Honorable Kandis A. Westmore, at the United States District Court for the Northern District of California, 1301 Clay Street, Oakland, California, Kevin A. Seely, Esq. ("Counsel") on behalf of Robbins Arroyo LLP, respectfully moves this Court for an Order withdrawing Robbins Arroyo LLP as counsel for *qui tam* plaintiff Tomiya Gaines ("Client"), the relator in the above-captioned *qui tam* action (the "Motion").

The Motion is made, consistent with L.R. 11-5, upon the grounds that: (i) Counsel's Agreement with Client contemplates Counsel to withdraw from representation under the current circumstances of this case (wherein the Government has declined to intervene and the Client has failed to substitute in new counsel); (ii) Client has requested that Counsel withdraw and does not oppose the Motion; and (iii) Client and Counsel profoundly disagree with respect to legal strategy and other matters given the Government's decision not to intervene, making it impossible for Counsel to continue to represent Client in any meaningful manner.

The Motion is based on the contents of this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, and the Declaration of Kevin A. Seely in Support ("Seely Decl.") filed concurrently herewith, the pleadings and papers on file in this action, and such further oral or documentary evidence as may be presented in this matter.

In accordance with Local Rule 11-5, ample notice of Robbins Arroyo's Motion (which was drafted at Client's request) has been sent to Client. Notice has also been sent to all other parties who have appeared in the case, including the Government.

Client has provided her address for purposes of service once the order is granted, and Counsel will continue to provide notice to Client until such time as the order to withdraw is granted. Moreover, Client has requested and Robbins Arroyo LLP has agreed to serve defendants with the summons and complaint, by having the summons issued with the Court simultaneously herewith and once issued, serve defendants with the summons and complaint and related documents, including this Motion, and file appropriate proofs of service on the Court and notice the parties, including Client and

1 the Government.

## 2 **MEMORANDUM OF POINTS AND AUTHORITIES**

### 3 **I. RELEVANT FACTS IN SUPPORT OF WITHDRAWAL**

4 On or about July 29, 2015, long before the filing of this action on behalf of the United States,  
5 Client and Counsel entered into a written, signed, agreement (the "Agreement"), wherein they agreed,  
6 among other things, to the scope of the attorney-client relationship. Among other things, it was  
7 discussed in the Agreement that if an action was filed and if the Government declined to intervene in  
8 the action, Counsel would not represent Client in the prosecution of the matter and that she would  
9 retain new counsel if she desired to continue with the case. *See* Seely Decl., ¶2.

10 On or about December 9, 2015, consistent with the above-referenced Agreement, this action  
11 was filed, under seal, pursuant to the False Claims Act, 31 U.S.C. §§3729, *et seq.*, to allow the  
12 Government time to investigate the allegations and to make a determination as to whether it would  
13 intervene, or decline to intervene, in the action. *See* Seely Decl., ¶3.

14 During late July 2016, the Government indicated its intention or inclination to decline to  
15 intervene in this action. Upon receiving news of the Government's intent to decline to intervene in  
16 this action and consistent with the terms of the Agreement, Counsel reminded Client of Counsel's  
17 intention to withdraw from representing her if she did not find other counsel or otherwise comply  
18 with the Agreement, should the Government decline to intervene in the matter as had been expressed  
19 by the Government. *See* Seely Decl., ¶4.

20 Around the same time, consistent with the Agreement, Client communicated to Counsel that  
21 she was in communications with potential new counsel. *See* Seely Decl., ¶5.

22 On or about August 3, 2016, the Government did in fact file its formal Notice of Election by  
23 the United States to Decline Intervention. *See* Seely Decl., ¶6.

24 On or about August 5, 2016, this action was unsealed. *See* Seely Decl., ¶7.

25 Since at least late July 2016 to the present, Counsel has repeatedly encouraged and reminded  
26 Client to retain and substitute in new legal counsel to replace Counsel in this action, consistent with  
27 the Agreement, if she wished to continue to pursue this declined action. Since at least early August  
28 2016 to the present, Counsel specifically and directly informed Client, in writing, of the need for her

1 to retain new counsel to be substituted into the case. *See* Seely Decl., ¶¶8-9.

2 During that same time frame, consistent with the Agreement, Client has repeatedly indicated  
3 that she understands that the Government has declined to intervene and that as a result, she must  
4 either agree to voluntarily dismiss this action, or find other counsel to represent her in this matter.  
5 Client has further repeatedly indicated that she understands Counsel's belief that the case may be  
6 dismissed if she does not have new counsel substitute into the case. *See* Seely Decl., ¶10.

7 To date, Client has not agreed to voluntarily dismiss this action and has not retained  
8 substitute counsel. Client has indicated that she intends to pursue this action despite the  
9 Government's decision to decline intervention and despite her failure to retain substitute counsel.  
10 *See* Seely Decl., ¶¶11, 14.

11 Client and Counsel profoundly disagree with respect to legal strategy and other matters,  
12 making it impossible for Counsel to continue to represent Client in any meaningful manner. *See*  
13 Seely Decl., ¶17. Thus, Client does not oppose the Motion. Client has requested that Counsel serve  
14 defendants with the summons and complaint and then withdraw from representation of Client in this  
15 matter. *See* Seely Decl., ¶¶12, 14, 17.

## 16 **II. ARGUMENT**

17 As explained in the supporting declaration of Counsel, Counsel's Motion is based on the  
18 grounds that: (i) Counsel's Agreement with Client contemplates Counsel to withdraw from  
19 representation under the current circumstances of this case (wherein the Government has declined to  
20 intervene and Client has failed to substitute in new counsel as agreed upon); (ii) Client has in fact  
21 requested that Counsel withdraw and does not oppose the Motion; and (iii) Client and Counsel  
22 profoundly disagree with respect to legal strategy and other matters given the Government's decision  
23 not to intervene, making it impossible for Counsel to continue to represent Client in any meaningful  
24 manner. *See* Seely Decl., ¶¶2, 8-12, 14, 19.

25 This Motion is brought consistent with L.R. 11-5, which states that an attorney may not  
26 withdraw as counsel except by leave of court. A motion for leave to withdraw must be made upon  
27 written notice given reasonably in advance to the client and to all other parties who have appeared in  
28 the action.

**A. Sufficient Written Advance Notice Has Been Given**

On July 29, 2015, by entering into the Agreement with Counsel, Client was put on notice that, if the Government declined to intervene, she would need to substitute in new counsel if she would want to continue the case. *See* Seely Decl., ¶2.

Since at least late July 2016, Client has been aware of the Government's intent to decline and of her need, consistent with the Agreement, to retain and substitute in new counsel if she desired to go forward with the case. *See* Seely Decl., ¶¶4-6, 8-10.

On or about August 3, 2016, the Government did in fact file its formal Notice of Election by the United States to Decline Intervention. On or about August 5, 2016, this action was unsealed. *See* Seely Decl., ¶¶6-7.

Repeatedly, since late July 2016 to the present, Counsel has reminded, encouraged, and advised Client to retain and substitute in new legal counsel, consistent with the Government's declination to intervene and the Agreement between Client and Counsel. *See* Seely Decl., ¶¶8, 13-14.

On October 3, 2016, Client e-mailed Counsel and requested that Counsel withdraw. In response, Counsel agreed to draft this Motion for filing with this Court. *See* Seely Decl., ¶12.

On October 8, 2016, Counsel provided Client with a draft copy of this Motion by e-mail. Client was again specifically and directly informed, in writing, of Counsel's belief that the case may be dismissed if Client does not have new counsel substitute into the case; and of the deadline to serve defendants by on or about November 3, 2016, if not sooner.<sup>1</sup> *See* Seely Decl., ¶13.

On October 10, 2016, Client confirmed her intention to pursue this action and approved filing of this Motion. *See* Seely Decl., ¶14.

On October 11, 2016, pursuant to L.R. 11-5, Counsel sent via e-mail to Client and the Government copies of the Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, the Declaration of Kevin A. Seely in Support, and proposed Order. *See* Seely Decl.,

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<sup>1</sup> Because this is an action brought on behalf of the Government, the Government or the defendant, at some point in the near future, may argue that the Client is barred from prosecuting this action *pro se*, if she does not promptly retain new counsel to represent her in this declined matter, on behalf of the Government. *See generally, Stoner v. Santa Clara Cty. Office of Educ.*, 502 F.3d 1116, 1126-28 (9th Cir. 2007).

¶15; *see also* Certificate of Service, filed concurrently herewith.

On October 13, 2016, Counsel sent Client the case file on a password protected disk and, of course, Client was separately provided with the password. The case file disk was sent by FedEx overnight delivery to Client at 10940 Trinity Parkway #C196, Stockton, CA 95219, which she confirmed to be her current mailing address. *See* Seely Decl., ¶16.

## **B. Good Cause Grounds for Withdrawal**

### **1. By Agreement, Counsel May Withdraw**

On or about August 3, 2016, the Government declined to intervene in this case. On or about August 5, 2016, the case was unsealed. No service of the summons and complaint on defendants has yet been made and there are no other pending motions or discovery at issue. However, consistent with the above, Counsel will have the summons issued by the Court simultaneously herewith and once issued, serve defendants with the summons and complaint and related documents, including this Motion, and file appropriate proofs of service on the Court and notice the parties, including Client and the Government.

Under these circumstances (where the Government has declined to intervene, the seal has been lifted, and Client has not substituted in new counsel, consistent with the written, signed Agreement between Client and Counsel, back on or about July 29, 2015) Counsel may withdraw. *See* Seely Decl., ¶2.

The Government has declined to intervene and this action is now unsealed; as of the filing of the Motion, Client has not substituted in new counsel. Client has requested that Counsel withdraw and does not oppose the Motion. Thus, Counsel hereby moves for leave to withdraw.

### **2. Other Good Cause for Withdrawal**

Finally, the Motion is consistent with the principles of CRPC 3-700(C)(1)(e), which provides that an attorney may seek leave to withdraw where "in a matter not pending before a tribunal, that the member engage in conduct that is contrary to the judgment and advice of the member but not prohibited under these rules or the State Bar Act." It is also consistent with CRPC 3-700(C)(6), an attorney may seek withdrawal where, as here, "the [attorney] believes in good faith, in a proceeding pending before a tribunal, that the tribunal will find the existence of other good cause for

1 withdrawal."

2 While Counsel believes that the record contained herein is more than sufficient for the Court  
3 to grant the Motion for the reasons stated herein or due to "the existence of other good cause for  
4 withdrawal," if the Court desires more information or detail, Counsel requests that the Court hold an  
5 in camera hearing outside of the presence of all other parties. CRPC 3-700(B) or (C); *see also* Cal.  
6 Bus. & Prof. Code §6068(e); CRPC 3-100(A); Cal. Evid. Code, §§950, *et seq.*

7 **III. CONCLUSION**

8 For all of the reasons discussed herein, the Motion should be conditionally granted, contingent  
9 and effective upon service of the summons and complaint on defendants by Counsel. Counsel further  
10 requests that, pending appearance of substitute counsel for Client/Plaintiff, all pleadings shall be  
11 served on Client/Plaintiff at: 10940 Trinity Parkway #C196, Stockton, CA 95219.

12 Dated: October 13, 2016

ROBBINS ARROYO LLP

13  
14 /s/Kevin A. Seely  
KEVIN A. SEELY

15 600 B Street, Suite 1900  
16 San Diego, CA 92101  
17 Telephone: (619) 525-3990  
18 Facsimile: (619) 525-3991  
E-mail: kseely@robbinsarroyo.com

19 Attorneys for Qui Tam Plaintiff

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27 1129438



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Attorneys for Qui Tam Plaintiff

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

UNITED STATES OF AMERICA *ex rel.*  
TOMIYA GAINES,

Plaintiff

v.

STANFORD HEALTH CARE and  
UNIVERSITY HEALTHCARE ALLIANCE,

Defendants.

Case No. C 15-05631 KAW

**CERTIFICATE OF SERVICE**

Magistrate Judge: Hon. Kandis A. Westmore  
Hearing Date: November 17, 2016  
Hearing Time: 11:00 a.m.  
ORAL ARGUMENT WAIVED

1 I, Kevin A. Seely, hereby certify that on October 13, 2016, pursuant to L.R. 11-5, I  
2 caused to be served written notice and copies of the following documents:

3 NOTICE OF MOTION AND MOTION OF ROBBINS ARROYO LLP TO  
4 WITHDRAW AS COUNSEL; MEMORANDUM OF POINTS AND AUTHORITIES  
5 IN SUPPORT;

6 DECLARATION OF KEVIN A. SEELY IN SUPPORT OF MOTION OF ROBBINS  
7 ARROYO LLP TO WITHDRAW AS COUNSEL; and

8 [PROPOSED] ORDER CONDITIONALLY GRANTING MOTION OF ROBBINS  
9 ARROYO LLP TO WITHDRAW AS COUNSEL.

by depositing same via overnight delivery to the following parties:

10 Tomiya Gaines  
11 10940 Trinity Parkway, C196  
12 Stockton, CA 95219

Brian J. Stretch, U.S. Attorney  
Sara Winslow, Assistant U.S. Attorney  
U.S. Department of Justice  
450 Golden Gate Avenue, Box 36055  
San Francisco, CA 94102

13 I further certify that on October 11, 2016, the above documents were sent via e-mail to  
14 the following parties:

15 Tomiya Gaines  
16 tomiyag@gmail.com

Brian J. Stretch, U.S. Attorney  
Sara Winslow, Assistant U.S. Attorney  
E-mail: sara.winslow@usdoj.gov

17 I further certify that on October 13, 2016, I authorized the electronic filing of the above  
18 documents with the Clerk of the Court using the CM/ECF system which will send notification  
19 of such filing to the e-mail addresses denoted on the Electronic Mail Notice List.

20 I certify that I am a member of the Bar of the United States District Court, Northern  
21 District of California.

22 I certify under penalty of perjury under the laws of the United States of America that the  
23 foregoing is true and correct.

24 Executed at San Diego, California, on October 13, 2016.

25 \_\_\_\_\_  
26 /s/ Kevin A. Seely  
27 Kevin A. Seely  
28

JS 44 (Rev. 12/12) cand rev (1/15/13)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

## I. (a) PLAINTIFFS

United States of America Ex Rel Tomiya Gaines

## DEFENDANTS

Stanford Health Care and University HealthCare Alliance

(b) County of Residence of First Listed Plaintiff  
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Kevin A. Seely, Robbins Arroyo LLP  
600 B Street, Suite 1900, San Diego, CA 92101  
(619) 525-3990

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

| CONTRACT  | TORTS  | FORFEITURE/PENALTY   | BANKRUPTCY   | OTHER STATUTES  |
|---|--|--|--|---|
| <input type="checkbox"/> 110 Insurance<br><input type="checkbox"/> 120 Marine<br><input type="checkbox"/> 130 Miller Act<br><input type="checkbox"/> 140 Negotiable Instrument<br><input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment<br><input type="checkbox"/> 151 Medicare Act<br><input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)<br><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits<br><input type="checkbox"/> 160 Stockholders' Suits<br><input type="checkbox"/> 190 Other Contract<br><input type="checkbox"/> 195 Contract Product Liability<br><input type="checkbox"/> 196 Franchise | <b>PERSONAL INJURY</b><br><input type="checkbox"/> 310 Airplane<br><input type="checkbox"/> 315 Airplane Product Liability<br><input type="checkbox"/> 320 Assault, Libel & Slander<br><input type="checkbox"/> 330 Federal Employers' Liability<br><input type="checkbox"/> 340 Marine<br><input type="checkbox"/> 345 Marine Product Liability<br><input type="checkbox"/> 350 Motor Vehicle<br><input type="checkbox"/> 355 Motor Vehicle Product Liability<br><input type="checkbox"/> 360 Other Personal Injury<br><input type="checkbox"/> 362 Personal Injury - Medical Malpractice | <input type="checkbox"/> 365 Personal Injury - Product Liability<br><input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability<br><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability<br><b>PERSONAL PROPERTY</b><br><input type="checkbox"/> 370 Other Fraud<br><input type="checkbox"/> 371 Truth in Lending<br><input type="checkbox"/> 380 Other Personal Property Damage<br><input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881<br><input type="checkbox"/> 690 Other<br><b>LABOR</b><br><input type="checkbox"/> 710 Fair Labor Standards Act<br><input type="checkbox"/> 720 Labor/Management Relations<br><input type="checkbox"/> 740 Railway Labor Act<br><input type="checkbox"/> 751 Family and Medical Leave Act<br><input type="checkbox"/> 790 Other Labor Litigation<br><input type="checkbox"/> 791 Employee Retirement Income Security Act | <input type="checkbox"/> 422 Appeal 28 USC 158<br><input type="checkbox"/> 423 Withdrawal 28 USC 157<br><b>PROPERTY RIGHTS</b><br><input type="checkbox"/> 820 Copyrights<br><input type="checkbox"/> 830 Patent<br><input type="checkbox"/> 840 Trademark<br><b>SOCIAL SECURITY</b><br><input type="checkbox"/> 861 HIA (1395ff)<br><input type="checkbox"/> 862 Black Lung (923)<br><input type="checkbox"/> 863 DIWC/DIWW (405(g))<br><input type="checkbox"/> 864 SSID Title XVI<br><input type="checkbox"/> 865 RSI (405(g))   |
| <b>REAL PROPERTY</b><br><input type="checkbox"/> 210 Land Condemnation<br><input type="checkbox"/> 220 Foreclosure<br><input type="checkbox"/> 230 Rent Lease & Ejectment<br><input type="checkbox"/> 240 Torts to Land<br><input type="checkbox"/> 245 Tort Product Liability<br><input type="checkbox"/> 290 All Other Real Property  | <b>CIVIL RIGHTS</b><br><input type="checkbox"/> 440 Other Civil Rights<br><input type="checkbox"/> 441 Voting<br><input type="checkbox"/> 442 Employment<br><input type="checkbox"/> 443 Housing/Accommodations<br><input type="checkbox"/> 445 Amer. w/Disabilities - Employment<br><input type="checkbox"/> 446 Amer. w/Disabilities - Other<br><input type="checkbox"/> 448 Education   | <b>PRISONER PETITIONS</b><br><b>Habeas Corpus:</b><br><input type="checkbox"/> 463 Alien Detainee<br><input type="checkbox"/> 510 Motions to Vacate Sentence<br><input type="checkbox"/> 530 General<br><input type="checkbox"/> 535 Death Penalty<br><b>Other:</b><br><input type="checkbox"/> 540 Mandamus & Other<br><input type="checkbox"/> 550 Civil Rights<br><input type="checkbox"/> 555 Prison Condition<br><input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement      | <b>FEDERAL TAX SUITS</b><br><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)<br><input type="checkbox"/> 871 IRS—Third Party 26 USC 7609   | <input checked="" type="checkbox"/> 375 False Claims Act<br><input type="checkbox"/> 400 State Reapportionment<br><input type="checkbox"/> 410 Antitrust<br><input type="checkbox"/> 430 Banks and Banking<br><input type="checkbox"/> 450 Commerce<br><input type="checkbox"/> 460 Deportation<br><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations<br><input type="checkbox"/> 480 Consumer Credit<br><input type="checkbox"/> 490 Cable/Sat TV<br><input type="checkbox"/> 850 Securities/Commodities/Exchange<br><input type="checkbox"/> 890 Other Statutory Actions<br><input type="checkbox"/> 891 Agricultural Acts<br><input type="checkbox"/> 893 Environmental Matters<br><input type="checkbox"/> 895 Freedom of Information Act<br><input type="checkbox"/> 896 Arbitration<br><input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision<br><input type="checkbox"/> 950 Constitutionality of State Statutes |

## V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from Another District (specify)  
☐ 6 Multidistrict Litigation

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
31 U.S.C. §3730

Brief description of cause:

Complaint for Damages under the Federal False Claims Act

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

12/09/2015

SIGNATURE OF ATTORNEY OF RECORD

## IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2)

(Place an "X" in One Box Only)



SAN FRANCISCO/OAKLAND



SAN JOSE



EUREKA

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UNIVERSITY HEALTHCARE ALLIANCE

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

UNITED STATES OF AMERICA EX REL  
TOMIYA GAINES,

Plaintiff,

vs.

STANFORD HEALTH CARE and  
UNIVERSITY HEALTHCARE  
ALLIANCE,

Defendants.

Case No. C 15-05631 KAW

**CONSENT OR DECLINATION TO  
MAGISTRATE JUDGE  
JURISDICTION**

INSTRUCTIONS: Please indicate below by checking one of the two boxes whether you (if you are the party) or the party you represent (if you are an attorney in the case) choose(s) to consent or decline magistrate judge jurisdiction in this matter. Sign this form below your selection.

☐ **Consent** to Magistrate Judge Jurisdiction

In accordance with the provisions 28 U.S.C. § 636(c), Defendants voluntarily **consent** to have a United States magistrate judge conduct all further proceedings in this case, including trial and entry of final judgment. Defendants understand that appeal from

the judgment shall be taken directly to the United State Court of Appeals for the Ninth Circuit.

**OR**

**(X) Decline** Magistrate Judge Jurisdiction

I represent Defendants STANFORD HEALTH CARE and UNIVERSITY HEALTHCARE ALLIANCE (collectively, “Defendants”). In accordance with the provisions of 28 U.S.C. 636(c), Defendants **decline** to have a United States magistrate judge conduct all further proceedings in this case and hereby request that this case be reassigned to a United States district judge.

Dated: November 30, 2016.

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Jacob R. Sorensen

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA EX REL  
TOMIYA GAINES,

Plaintiff,

vs.

STANFORD HEALTH CARE and  
UNIVERSITY HEALTHCARE  
ALLIANCE,

Defendants.

Case No. 3:15-cv-05631-RS

**DEFENDANTS' SUBMISSION IN  
ADVANCE OF MARCH 9, 2017 CASE  
MANAGEMENT CONFERENCE**



1 Defendants STANFORD HEALTH CARE and UNIVERSITY HEALTHCARE  
2 ALLIANCE (collectively, “Defendants”), submit this statement in advance of the Case  
3 Management Conference scheduled for March 9, 2017, at 10 a.m.

4 Plaintiff Tomiya Gaines filed the complaint in this action on December 9, 2015.  
5 Because the complaint asserted claims under the False Claims Act, it was filed under seal  
6 and the United States was given the opportunity to review the allegations and determine  
7 whether it wished to intervene. On August 3, 2016, the United States filed a “Notice of  
8 Election to Decline Intervention; [Proposed] Order to Unseal.” On August 5, 2016, Judge  
9 Kandis Westmore entered the Order to Unseal.

10 On October 3, 2016, Plaintiffs’ counsel filed a motion to withdraw. Dkt. 6. On  
11 November 9, 2016, Judge Westmore granted the motion in part and denied it in part. *See*  
12 Order Conditionally Granting Motion of Robbins Arroyo LLP to Withdraw as Counsel  
13 (Dkt. 14) (the “Order”). The Court held that Plaintiff could not prosecute the case as a pro  
14 se litigant and that she must obtain new counsel and file a notice of appearance on or before  
15 February 10, 2017 or the case would be dismissed without prejudice. *Id.* at 2:7-14. The  
16 Court further ordered that Plaintiff’s counsel forward papers to Plaintiff and file certificates  
17 of service on the docket until Plaintiff obtained new counsel. *Id.* at 2:15-16.

18 The Order appeared to stay the case until Plaintiff obtained new counsel. However,  
19 in an abundance of caution, Defendants’ counsel requested that Plaintiff stipulate to extend  
20 Defendants’ time to respond to the Complaint. When Defendants’ counsel received no  
21 response, Defendants filed an administrative motion to extend their time to respond to the  
22 complaint until after Plaintiff obtained new counsel. The case was transferred to this Court  
23 on December 2, 2016. Dkt. 24. On December 13, 2016, the Court granted Defendants’  
24 administrative motion. Dkt. 26.

25 Defendants have heard nothing further from Plaintiff or her former counsel.  
26 February 10, 2017 came and went, and Plaintiff did not associate in new counsel as ordered  
27 by the Court on November 9. As stated in the Order, “the failure to obtain new counsel  
28 would require that the case be dismissed.” Order at 2:11-12 (*citing Stoner v. Santa Clara*



1 *Cty. Office of Educ.*, 502 F.3d 1116, 1126-27 (9th Cir. 2007)). “Any failure to timely retain  
2 substitute counsel will result in the dismissal of the case without prejudice.” *Id.* at 2:12-14.  
3 Defendants respectfully request that the Court now dismiss the case.

4 Dated: March 2, 2017.

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

UNITED STATES OF AMERICA EX REL  
TOMIYA GAINES,

Plaintiff,

vs.

STANFORD HEALTH CARE and  
UNIVERSITY HEALTHCARE  
ALLIANCE,

Defendants.

Case No. C 15-05631 KAW

**ADMINISTRATIVE MOTION TO  
EXTEND TIME TO RESPOND TO  
COMPLAINT**

Civil L.R. 6-3

Pursuant to Civil L.R. 6-3, Defendants STANFORD HEALTH CARE and UNIVERSITY HEALTHCARE ALLIANCE (collectively, “Defendants”), by and through their undersigned counsel, hereby move for an order extending the time for Defendants to respond to Plaintiff’s complaint. Plaintiff filed the complaint under seal on December 9, 2015, and served Defendants with the Complaint on or around October 17, 2016. Defendants’ deadline to respond to the complaint is November 23, 2016. However, as explained further below, the Court has directed Plaintiff to find new counsel or the case will be dismissed. Defendants respectfully request that the deadline for responding to Plaintiff’s

1 complaint be extended until 30 days after Defendants are served with notice of appearance  
2 of Plaintiff's new counsel.

3 On November 9, 2016 this Court granted in part and denied in part Plaintiff's  
4 counsel's motion to withdraw as counsel. *See* Order Conditionally Granting Motion of  
5 Robbins Arroyo LLP to Withdraw as Counsel (Dkt. 14) (the "Order"). The Court held that  
6 Plaintiff could not prosecute the case as a pro se litigant and that she must obtain new  
7 counsel and file a notice of appearance on or before February 10, 2017 or the case would be  
8 dismissed without prejudice. *Id.* at 2:7-14. The Court further ordered that Plaintiff's  
9 counsel forward papers to Plaintiff and file certificates of service on the docket until  
10 Plaintiff obtained new counsel. *Id.* at 2:15-16.

11 The Order appears to stay the case until Plaintiff obtains new counsel. However, to  
12 avoid any uncertainty, Defendants' counsel requested that Plaintiff stipulate to extend  
13 Defendants' time for responding to the Complaint. On November 14, 2016 Defendants'  
14 counsel contacted Plaintiff's counsel by telephone and left a voicemail articulating this  
15 request. Declaration of Jacob R. Sorensen in Support of Defendants' Administrative  
16 Motion to Extend Time to Respond to Complaint ("Sorensen Decl.") ¶ 3. On November  
17 15, 2016, Defendants' counsel also sent a follow-up e-mail to Plaintiff's counsel with this  
18 request. *Id.* ¶ 4; Ex. A. Plaintiff's counsel responded on November 16, 2016 that he would  
19 contact Plaintiff about Defendants' request. *Id.* ¶ 5, Ex. A. However, as of the time of this  
20 filing, neither Plaintiff's counsel nor Plaintiff have responded to Defendants' counsel's  
21 request. *Id.* ¶ 6.

22 If the Court does not extend Defendants' time for responding to the Complaint,  
23 Defendants will be prejudiced in that they will incur the cost of responding to the  
24 Complaint even though the case may be dismissed. Moreover, as the Court recognized in its  
25 Order, Plaintiff is purporting to represent the United States – and her actions would bind the  
26 Government – but she has no right to do so without counsel. Dkt. 14 at 2:7-12.

27 This is Defendants' first request for modification of time in this matter. Sorensen  
28 Decl. ¶ 7. This request should have no effect on the schedule in this case. *Id.* at ¶ 8.

1 Accordingly, Defendants respectfully request that the deadline for responding to  
2 Plaintiff's complaint be extended until 30 days after Defendants are served with notice of  
3 appearance of Plaintiff's new counsel.

4 Dated: November 18, 2016.

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