

SEP 6 2023 PM 2:08
FILED - USDC - FLMD - ORL

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA
and the STATE OF FLORIDA *ex rel.*
OMNI HEALTHCARE, INC. and
JOHN DOE,

FILED UNDER SEAL

Case No. 6:22-cv-00696-PGB-DCI

Plaintiffs,

v.

NORTH BREVARD COUNTY
HOSPITAL DISTRICT d/b/a
PARRISH MEDICAL CENTER;
HALIFAX HOSPITAL MEDICAL;
CENTER; GEORGE
MIKITARIAN; CHRISTOPHER
McALPINE; ANUAL JACKSON,
SR.; ERIC PEBURN; and JEFF FEASAL,

Defendants

**THE UNITED STATES AND STATE OF FLORIDA'S
NOTICE OF ELECTION TO DECLINE INTERVENTION**

Pursuant to the False Claims Act, 31 U.S.C. § 3730(b)(4)(B), and the Florida False Claims Act, Fla. Stat. § 68.083(6)(b), the United States and the State of Florida notify the Court of their decision not to intervene in this action.

The False Claims Act allows the Relators to maintain this action in the name of the United States and the State of Florida. *See* 31 U.S.C. § 3730(b)(4)(B); Fla. Stat. § 68.084(3). However, the “action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting.” 31 U.S.C. § 3730(b)(1); *see also* Fla. Stat. §§ 68.083(2) and 68.084(2)(a).

Therefore, the United States and the State of Florida request that, should the Relators or any of the Defendants propose that this action be dismissed, settled, or otherwise discontinued, this Court solicit the written consent of the United States and the State of Florida before ruling or granting its approval.

Pursuant to 31 U.S.C. § 3730(c)(3), the United States further requests that all pleadings filed in this action be served on the United States and that all orders issued by the Court be sent to the government's counsel. The United States reserves its right to order any deposition transcripts, intervene in this action, for good cause, at a later date, and seek the dismissal of the Relator's action or any claims. The United States also requests that it be served with all notices of appeal. The State of Florida makes the same request as permitted under Florida law. Fla. Stat. § 68.084(3).

Finally, the United States and the State of Florida request that the Relators' complaint, this notice, and the attached proposed order be unsealed. The United States requests that its memoranda submitted in support of the government's extension requests remain under seal because the United States submitted them *ex parte* for the sole purpose of showing good cause to extend the seal and time for making an intervention decision, as required by the False Claims Act. 31 U.S.C. § 3730(b)(3).

Though there is a presumption of public access to judicial documents, the common-law right of access is not absolute. *Perez-Guerrero v. United States Attorney General*, 717 F.3d 1224, 1235 (11th Cir. 2013) (citing *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 597 (1978)). This Court has discretion to determine if portions of the

record should remain under seal; this discretion is to be exercised in light of the relevant facts and circumstances of the particular case. *Perez-Guerrero*, 717 F.3d at 1235. When a party requests to seal only a portion of a record, the Court must balance the competing interests of the parties. *Id.* Given the procedural posture of this case, no party is currently seeking access to the government's extension memoranda.

In considering the government's request for continued protection of its extension memoranda, one factor the Court may consider is whether access "is likely to promote public understanding of historically significant events." *Id.* at 1235-36. The purpose of the government's extension memoranda in this *qui tam* case was to show good cause to extend the time it had to make an intervention decision, during which time the case also remained under seal. 31 U.S.C. § 3730(b)(3). To establish good cause, the government disclosed information that revealed certain investigative techniques.

The disclosure of investigative steps and their timing may harm the government's future investigations. Even with respect to investigative steps that are well known, such as witness interviews and service of civil investigative demands, whether the government chooses to employ such tools in any given case and when it chooses to do so are facts that reveal the government's strategy and thought processes. The public is not generally entitled to know the internal deliberations of the United States. The False Claims Act is unique in requiring that the United States reveal what is typically not made public.

Further, the government's investigative steps are not "historically significant events" because they do not represent a final decision. What is historically significant is the government's decision to intervene or decline intervention, which, in this case, will be revealed to the public by unsealing this notice. For these reasons, the United States respectfully requests that its extension memoranda be kept under seal. Courts in the Middle District of Florida have maintained the government's extension applications and memoranda under seal for these purposes. *See, e.g., United States ex rel. McGee et al. v. CYE Enterprises, Inc.*, Case No. 3:18-cv-1514-J-34PDB, Doc. 18; *United States ex rel. Casanova v. Coastal Mental Health Ctr., Inc.*, Case No. 6:14-cv-204-Orl-40DAB (public record containing only portions of record); *United States ex rel. Hopson v. Air Ideal, Inc.*, Case No. 6:13-cv-775-Orl-37GJK, Doc. 15 (order unsealing relator's complaint and other pleadings and maintaining seal over government's extension applications and memoranda); *United States ex rel. Willis v. Physicians United Plan, Inc.*, Case No. 8:12-cv-2581-T-35MAP, Doc. 4 (same); *United States ex rel. Parker v. Space Coast Medical Assocs., L.L.P.*, Case No. 6:13-cv-1068-Orl-22TBS, Doc. 9 (same).


A proposed order accompanies this notice..

Dated: September 6, 2023


Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 6, 2023, true and correct copies
of the foregoing motion were served on the following:

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Defendants

ORDER

The United States and the State of Florida having declined to intervene in this action pursuant to the False Claims Act, 31 U.S.C. § 3730(b)(4)(B), and Florida Statutes § 68.083(6)(b), it is hereby **ORDERED** that:

1. The complaint be unsealed and served by the Relators on the Defendants;
2. All other contents of the Court's file in this action remain under seal and not be made public or served upon the Defendants, except for this Order and the

United States' Notice of Election to Decline Intervention, which the Relators shall serve on the Defendants after service of the complaint;

3. The seal be lifted as to all other matters occurring in this action from the date of this Order and thereafter;

4. The parties shall serve all pleadings and motions filed in this action, including supporting memoranda, on the United States and the State of Florida, as provided for in 31 U.S.C. § 3730(c)(3) and Florida Statutes § 68.084(3). The United States and the State of Florida may order any deposition transcripts and are entitled to intervene at any time in this action, for good cause, and to move to dismiss this action;

5. The parties shall serve all notices of appeal on the United States and the State of Florida.

6. All Orders of this Court shall be sent to the United States and the State of Florida; and

7. Should the Relators or any of the Defendants propose that this action be dismissed, settled, or otherwise discontinued, the Court will solicit the written consent of the United States and the State of Florida before ruling or granting its approval.

DONE and ORDERED in Chambers in Orlando, Florida, this ____ day of _____, 2023.

PAUL G. BYRON
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel of Record