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7 Attorneys for Plaintiffs
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9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE DISTRICT OF ALASKA AT ANCHORAGE

11
12 JOAN WILSON and)
PAUL FRANKE, M.D.,)
13)
Plaintiffs,)
14 vs.)
15)
ALASKA NATIVE TRIBAL)
16 HEALTH CONSORTIUM,)
17 Defendant.) Case No. 3:16-cv-00195-JWS
18 _____)

19 **PLAINTIFFS' MOTION TO AMEND FIRST AMENDED COMPLAINT**

20 Joan Wilson and Dr. Paul Franke, through counsel, the law
21 firm of Dillon & Findley, P.C., move this Court to amend the
22 First Amended Complaint. Specifically, the Plaintiffs intend to
23 add individual claims under the False Claims Act and Alaska law
24

25
26 PLS.' MOT. TO AMEND FIRST AMENDED COMPLAINT
Joan Wilson & Paul Franke, M.D. v. Alaska Native Tribal Health Consortium
Case No. 3:16-cv-00195-TMB
Page 1 of 5

1 against Roald Helgesen and Andrew Teuber, two ANTHC¹ executives.
2 These claims include some additional factual assertions,
3 outlining Mr. Helgesen's and Mr. Teuber's individual knowledge
4 about the events alleged in the First Amended Complaint. But
5 there are no changes to the claims alleged in the Second Amended
6 Complaint, lodged here. Justice requires that leave be granted
7 to the Plaintiffs to make these amendments.
8

9 DISCUSSION

10 Federal Civil Rule 15(a)(2) provides that the Court should
11 freely give leave to amend when justice so requires. The Ninth
12 Circuit has provided that this rule should "be applied with
13 extreme liberality."² In *Foman v. Davis*, the Supreme Court
14 offered the factors a district court should consider in deciding
15 whether to grant leave to amend:
16

17 In the absence of any apparent or declared reason—
18 such as undue delay, bad faith or dilatory motive
19 on the part of the movant, repeated failure to
20 cure deficiencies by amendments previously
21 allowed, undue prejudice to the opposing party by
22 virtue of allowance of the amendment, futility of

23 ¹ "ANTHC" is the Alaska Native Tribal Health Consortium.

24 ² *Zhongqi Zhu v. Cty. of Los Angeles*, 595 F. App'x 728, 729
25 (9th Cir. 2015); *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183,
185 - 86 (9th Cir. 1987).

1 amendment, etc.—the leave sought should, as the
2 rules require, be “freely given.”³

3 Not all of these factors are weighed equally. The Ninth
4 Circuit has held that it is “the consideration of prejudice
5 to the opposing party that carries the greatest weight,”⁴
6 and that the party opposing the amendment “bears the burden
7 of showing prejudice.”⁵ Absent undue prejudice, or a strong
8 showing of the above *Foman* factors, there is a presumption
9 under Civil Rule 15(a) in favor of granting leave to amend.
10 The Supreme Court has also made clear that “[i]f the
11 underlying facts or circumstances relied upon by a
12 plaintiff may be a proper subject of relief, he ought to be
13 afforded an opportunity to test his claim on the merits.”⁶

14 Here, ANTHC cannot show any prejudice. Discovery has
15 not commenced. ANTHC has not even filed its answer or any
16
17
18

19
20 ³ *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048,
21 1052 (9th Cir. 2003) (citing *Foman v. Davis*, 371 U.S. 178
(1962)).

22 ⁴ *Eminence Capital, LLC*, 316 F.3d at 1052 (citing *DCD*
23 *Programs, Ltd.*, 833 F.2d at 185).

24 ⁵ *Id.*

25 ⁶ *Foman*, 371 U.S. at 182.

1 motion under Federal Civil Rule 12. In fact, Plaintiffs
2 agreed to any additional time ANTHC needs to address the
3 addition of Mr. Teuber and Mr. Helgesen in any answer or
4 other pleading because of the timing of this motion.
5 Moreover, this Court routinely issues the Initial Case
6 Status Report / Case Scheduling & Planning form, which
7 includes a provision that allows a party to add or amend
8 its claims within 60 days. That order has not issued, but
9 when it is will allow for the amendment proposed here.
10

11
12 This Court routinely allows for amendments to
13 complaints.⁷ Plaintiffs suspect that ANTHC's opposition
14 will include an argument that any amendment is futile.
15 ANTHC is wrong.⁸ But even so, this court, in *Miller v. JP*
16 *Morgan Chase Bank, N.A.*, rejected a similar argument,
17 stating that the party opposing amendment could "file a
18
19
20

21 ⁷ See, i.e., *Miller v. JP Morgan Chase Bank, N.A.*, 2016 WL
22 11000793, *1 (June 6, 2016) (allowing a party to amend a
complaint because the amendment does not cause undue delay).

23 ⁸ *Stoner v. Santa Clara County Office of Education*, 502 F.3d
24 1116, 1125 (9th Cir. 2007); *Dahlstrom v. Sauk-Suiattle Indian*
25 *Tribe*, 2017 WL 1064399 (W.D. Wash. March 21, 2017) (rejecting
the argument that a tribe's sovereign immunity extends to
individual defendants).

1 future motion to dismiss the amended complaint if it finds
2 that to be appropriate."⁹

3 For the reasons outlined here, this Court should grant
4 this motion and deem the Second Amended Complaint, lodged
5 here, as filed.
6

7 DATED this 15th day of August 2018, at Anchorage, Alaska.

8 DILLON & FINDLEY, P.C.
9 Attorneys for Plaintiffs

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17 **CERTIFICATE OF SERVICE**

18 I hereby certify that on August 15,
19 2018 a copy of the foregoing
20 Plaintiffs' Motion to Amend First
21 Amended Complaint was served
22 electronically through the CM/ECF
23 system on Nicholas C. Perros, Richard
24 L. Pomeroy, and Richard D. Monkman.

25 s/Molly C. Brown

26 ⁹ *Id.*

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15 ALASKA NATIVE TRIBAL)
HEALTH CONSORTIUM; ANDREW)
16 TEUBER; and ROALD HELGESEN,)
17 Defendants.)

Case No. 3:16-cv-00195-JWS

18
19 PLAINTIFFS' SECOND AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

20
21 Plaintiffs Joan Wilson and Dr. Paul Franke, allege and
22 swear as follows:
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PLAINTIFFS' SECOND AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

Joan Wilson, et al. v. Alaska Native Tribal Health Consortium, et al.

Case No. 3:16-cv-00195-JWS

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1 billing practices. Dr. Franke's contract with ANTHC was
2 terminated and not renewed as a result of his complaints about
3 ANTHC's violations of internal policies, and state and federal
4 law.

5 5. ANTHC is an Alaska nonprofit corporation in good
6 standing in Alaska. ANTHC is also a Tribal Organization and
7 inter-Tribal consortium of federally recognized Alaska Tribes
8 and Tribal Organizations. ANTHC provides health care to
9 approximately 160,000 Alaska Natives, American Indians, Indian
10 Health Services beneficiaries and other individuals eligible to
11 receive care and services at ANMC. ANTHC is also a Federal
12 Qualified Health Center.
13

14 6. Roald Helgesen is ANTHC's Chief Executive Officer and
15 Hospital Administrator.
16

17 7. Andrew Teuber is ANTHC's president, Mr. Helgesen's
18 direct supervisor, and oversees executive functions undertaken
19 by Mr. Helgesen.
20

21 Background

22 8. Medicare is a federally funded program, 42 U.S.C.
23 § 1395j *et seq.*, which provides medical care based on age,
24 disability, or affliction with disease. Medicare Part B governs
25 reimbursement for medically necessary services furnished by
26

1 health care providers such as doctors. 42 U.S.C. §§ 1395j-
2 1395w-4. Medicare will not pay for treatments that are not
3 administered for the appropriate reason by the appropriate
4 treating provider.

5 9. Under Medicare, "no payment may be made under . . .
6 Part B . . . for any expenses incurred for items or services -
7 which . . . are not reasonable and necessary for the diagnosis
8 or treatment of illness or injury or to improve the functioning
9 of a malformed body member." 42 U.S.C. § 1395y(a)(1)(A).

10 10. Physicians who participate in the Medicare program are
11 reimbursed at a rate outlined in a physician's fee schedule, in
12 accordance with federal statutes and regulations.

13 11. ANTHC employs doctors and other health care providers
14 that provide federally-funded health services, including
15 services that are billed and paid under Medicare.

16 12. ANTHC employs doctors and other health care providers
17 that provide federally-funded health services, including
18 services that are billed and paid under Medicaid.

19 13. Medicaid is an entitlement program created by the
20 United States Government, and is the primary public program for
21 financing basic health and long-term care services for low-
22 income Alaskans. Traditionally, in Alaska, Medicaid is funded
23
24
25
26

1 50% by the State of Alaska, and 50% by the United States
2 Government. However, by and through the Indian Health Care
3 Improvement Act, the Medicaid funds at issue in this case are
4 100% paid by the Federal Medical Assistance Percentage for
5 Medicaid Services. As such, the Medicaid funds at issue in this
6 case are federal funds only. Medicare will not pay for
7 treatments that are not administered for the appropriate reason
8 by the appropriate treating provider.

10 14. ANTHC receives significant revenue from Medicare and
11 Medicaid.

12 15. The Center for Medicare and Medicaid Service ("CMS"),
13 part of the Department of Health and Human Services, administers
14 the Medicare program. CMS is authorized by Congress, per
15 42 U.S.C. § 1395w-4(c)(5), to establish a uniform code for
16 identifying physicians' services for use in completing Medicare
17 and Medicaid claim forms.

19 16. CMS utilizes a Healthcare Common Procedure Code
20 System, which is divided into two principal systems referred to
21 as Level I and Level II. Level I is a numeric coding system
22 established by the American Medical Association called "Current
23 Procedural Terminology," or "CPT" that is a common language for
24 coding physician services and procedures for the purpose of
25

1 seeking Government funds through reimbursement under Medicare
2 and Medicaid.

3 17. To participate in Medicare and Medicaid, providers,
4 and entities like ANTHC, must assure that their services are
5 provided to Medicare and Medicaid patients economically and only
6 when and to the extent they are medically necessary.
7

8 18. This includes the general principle that medical
9 advice and treatment must be motivated by the patient's best
10 interest, not an entity's financial interest.

11 19. In fact, in order to bill the Government through
12 Medicare, a health care provider must sign the CMS 1500 form,
13 which includes a certification that the services were medically
14 indicated and necessary for the health of the patient, and were
15 personally furnished by the physician or the physician's
16 employee, under the physician's direction. A similar
17 certification is required on a Medicaid form.
18

19 20. ANTHC employs physicians who work at ANMC. ANTHC
20 provides the billing for the services performed by its employees
21 and contractors.
22

23 21. During Ms. Wilson's and Dr. Franke's tenure at ANTHC,
24 they both observed the day-to-day operations of ANMC, as well as
25 the business practices of ANTHC. Ms. Wilson and Dr. Franke also
26

1 personally interacted on a daily basis with ANTHC leadership and
2 decision-makers, including the ANTHC general counsel, Nacole
3 Heslep, Mr. Helgesen, Mr. Teuber, and other ANTHC Board of
4 Directors. The allegations herein are based on Ms. Wilson's and
5 Dr. Franke's personal observations and documents in support of
6 the same.
7

8 **Facts Related to Billing**

9 22. ANTHC is in violation of the Alaska Tribal Billing
10 Manual for Medicaid Services, which prevents ANMC from billing
11 for pharmaceuticals dispensed incident to an outpatient visit.
12 Specifically, ANMC bills through its Pharmacy Medicaid
13 Enrollment Number for infusion drugs dispensed during an
14 outpatient visit. In a form of double billing, ANTHC also
15 includes the expense of these drugs in the cost reports used to
16 calculate the Indian Health Services encounter rate for
17 outpatient visits.
18

19 23. In addition to billing for drugs included in an
20 outpatient visit and calculating an encounter rate that also
21 includes those costs, ANTHC and ANMC bills Medicare and Medicaid
22 for oncology visits where care is provided solely by registered
23 nurses, an ineligible provider under both programs. As Chief
24 Ethics and Compliance Officer, Ms. Wilson was personally aware
25

1 of these practices and repeatedly attempted to reverse these
2 practices. Ms. Wilson repeatedly brought these issues to the
3 attention of ANTHC and Mr. Helgesen. Claiming the resolution
4 was under the auspices of the General Counsel's office, which
5 took years to resolve compliance billing concerns, ANTHC and
6 Mr. Helgesen, and Mr. Teuber refused to alter their practices.
7

8 24. The above-described practices by ANTHC have been
9 ongoing for at least five years. Mr. Helgesen and Mr. Teuber
10 were well-aware of the practices and approved delaying response
11 to the same. During such time ANTHC continued to bill for
12 nursing visits. As a result, ANTHC has received overpayments
13 from the federal Government.
14

15 25. During Dr Franke's first months at ANTHC, while
16 working as the ANMC Director, Dr. Franke looked into ANMC's
17 revenue cycle to verify revenues from federal and state payers.
18

19 26. Dr. Franke's efforts included reviewing documents that
20 support the services provided. In what he considers a "minor
21 review," over a short period of time, Dr. Franke identified
22 \$7 million in services that ANTHC inappropriately billed and for
23 which funds were collected, as the services provided were not
24 appropriately authenticated by providers. This is because ANTHC
25 billed for services in advance of ensuring appropriate coding
26

1 for those services. Essentially, ANTHC billing personnel billed
2 for unsigned orders. ANTHC billed for this type of
3 unauthenticated order from 2010-2013 in an amount that totaled
4 millions of dollars. Dr. Franke discussed these issues with
5 Mr. Helgesen and with the other ANTHC executives. Mr. Helgesen
6 and Mr. Teuber were aware of these issues, including that
7 Dr. Franke and Ms. Wilson were concerned that the billing
8 practices violated the law.

9
10 27. In addition to orders entered by non-privileged
11 residents, Ms. Wilson also discovered that admission orders for
12 newborns were entered by nurses, but were never approved by
13 physicians or nurse midwives with admitting privileges. This
14 practice began at the implementation of a new electronic medical
15 record program and ended on August 28, 2014. Ms. Wilson worked
16 to get ANTHC and ANMC to end the practice of billing for non-
17 authenticated visits, but could not get ANTHC or ANMC to return
18 the overpayments. Mr. Helgesen, Mr. Teuber and Ms. Heslep were
19 aware of the unauthenticated visits but took no action to
20 identify the issue with CMS or the Office of Inspector General
21 of the Department of Health and Human Services. Mr. Helgesen,
22 Mr. Teuber and others took no action to return funds received as
23 a result of the improper billing practices.
24
25
26

1 Mr. Teuber are aware of these issues and have taken no steps to
2 stop the improper billing practices.

3 31. ANTHC and ANMC also double bill due to an electronic
4 health record system problem, where ANTHC and ANMC generate a
5 new encounter number when a patient moves from one level of care
6 to the next. For example, when a patient in the Intensive Care
7 Unit at ANMC is transferred to a lower level of care, the
8 patient's orders are all reentered and rebilled. In this
9 instance, orders are reinitiated and, if not properly included
10 in the encounter rate, billed. ANTHC is well-aware of this
11 problem because physicians at ANMC and ANTHC consistently
12 complain about it. This practice is evidenced by the duplicate
13 ventilator charges for the same patient on the same day or
14 charges on days the service was not provided. Mr. Helgesen and
15 Mr. Teuber are aware of these issues and have taken no steps to
16 stop the improper billing practices.

17
18
19 **Facts Related to Inappropriately Received Meaningful Use Funds**

20 32. An external consultant's analysis of the security of
21 ANTHC's electronic medical health record system and supporting
22 technology established that ANTHC must, on a timely basis,
23 undertake 182 action items to meet the Meaningful Use
24 requirements for an effective, integrated medical record for
25

1 which ANTHC has already received Medicare and Medicaid incentive
2 payments on behalf of the hospital and enrolled providers. ANTHC
3 has not taken the necessary action to satisfy the Meaningful Use
4 requirements. In fact, Mr. Helgesen and Mr. Teuber are both
5 aware of these issues and have taken no steps to satisfy the
6 Meaningful Use requirements.
7

8 33. Meaningful Use requires that known deficiencies must be
9 addressed within the attestation period subject to the receipt of
10 funds. Ms. Wilson tried to make funding for correction of these
11 deficiencies a priority. Ms. Wilson talked to Mr. Helgesen who
12 reported her concerns to Mr. Teuber. Ms. Wilson was informed any
13 extension of the electronic records systems to other tribal
14 health entities would not be delayed to resolve these
15 deficiencies. Ms. Wilson knows that is true because Mr. Helgesen
16 told her Mr. Teuber directed Mr. Helgesen to ignore the
17 significant security concerns.
18

19 34. Even if funding was received, ANTHC security priorities
20 were demoted in importance for expansion of the electronic health
21 record to other tribal health systems, thereby creating
22 vulnerability for the electronic health records of over 160,000
23 Alaska Native and American Indian beneficiaries. Mr. Helgesen
24 and Mr. Teuber were directly involved in this decision to fund
25

1 the extension, but provide de minimus and ineffective funding to
2 resolve the security concerns.

3 35. As a result of all of this, ANTHC improperly received
4 Meaningful Use funds in an amount that exceeds \$20 million.

5 **Facts Related to Generally Improper Billing Practices**

6
7 36. Mr. Helgesen has admitted to Ms. Wilson that he agrees
8 with her assessment that while ANTHC has been committed to the
9 expansion of services, it has failed to make the necessary
10 operational changes and capital support to support the
11 expansion. This includes not only the failure to develop
12 appropriate procedures and technical fixes to stop inappropriate
13 billing, but the failure to foresee and timely address the
14 numerous billing issues its expansion has caused not only for
15 ANTHC but for other tribal providers. For example, ANTHC and
16 ANMC inappropriately bill for pharmaceuticals dispensed incident
17 to outpatient visits, causing similar billing problems related
18 to tribal facilities connected to the shared electronic health
19 record system. Ms. Wilson attempted to stop these inappropriate
20 billing practices, and urged ANTHC to return, report and repay
21 overpayments that ANTHC wrongfully retained. Mr. Helgesen and
22 Mr. Teuber were aware of her objections. In fact, Mr. Helgesen
23
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26

1 and Mr. Teuber buried Ms. Wilson's draft compliance plan,
2 designed to remedy billing concerns.

3 37. Prior to being terminated, Ms. Wilson investigated
4 issues related to the use of the automatic dispensing of
5 pharmaceutical drugs through a program called Pyxis MedStation.
6 The program is not working properly in connection with ANMC's
7 electronic health records system. For example, professionals
8 often enter drug dispensing orders for three patients. Because
9 Pyxis and ANMC's electronic health record system are not
10 compatible, one patient is charged for all three drugs, while
11 other patients are not charged at all. The system is also
12 susceptible to fraud. Ms. Wilson informed Mr. Helgesen of her
13 investigation, including the following issues (which have been
14 identified and documented by ANTHC): (1) late charges are being
15 posted to patient's accounts when the documentation in the
16 patient's health records do not support the charges; (2) "dummy
17 patients" are created to pull stock quickly; and (3) machines are
18 not locked and alarms are disarmed, which allows staff to pull
19 stock and supplies without recording orders.
20
21
22

23 38. Ms. Wilson and Dr. Franke know that ANTHC and ANMC are
24 inappropriately billing for services provided off campus under
25 eligible billing numbers. This includes billing for services
26

1 provided at the ANTHC new outpatient surgery center, which is
2 well outside the bounds of the ANMC campus. Ms. Wilson learned
3 that ANTHC was likely (1) billing for physical therapy services
4 that were not provided during inpatient care for critical care
5 patients; (2) upcoding the facility fee provided for Emergency
6 Room services by identifying a level of care that was not
7 provided; (3) impermissibly billing anesthesia charges for in-
8 room/out-room times rather than the start time and stop time of
9 surgeries; (4) diverting funds that should be available for
10 tribal health care by allowing first class travel and double and
11 triple booking of flights for Andy Teuber, other ANTHC Board
12 members and others personally selected for these fringe
13 benefits, all in violation of ANTHC policy and Internal Revenue
14 Service regulations; and (5) not returning overpayments for
15 medical services ordered by either non-privileged or improperly
16 supervised physician assistants. Mr. Helgesen and Mr. Teuber
17 are aware of these improper billing practices, and have taken no
18 action to stop them, or to notify the Government regarding the
19 same.
20
21
22

Facts Related to Employment Claims - Ms. Wilson

23
24 39. ANTHC terminated Ms. Wilson on May 6, 2016. Ms. Wilson
25 was wrongfully terminated because she voiced her concerns,
26

1 including those outlined above, regarding ANTHC's failure to
2 abide by federal and state laws, and regulations and internal
3 policies. Two days before Ms. Wilson's termination, and at the
4 request of Southcentral Foundation's Compliance Officer Fran
5 Arsenaeu, Ms. Wilson hand-delivered a Medicaid billing concern
6 regarding the Kodiak Area Native Association (for which
7 Mr. Teuber serves as the Chief Executive Officer). Mr. Helgesen
8 was upset about Ms. Wilson's decision to submit the billing
9 concern.
10

11 40. Ms. Wilson expressed concerns to Mr. Helgesen about
12 ANTHC's failure to correct its unlawful billing practice and
13 treatment of Meaningful Use funds and its unwillingness to
14 correct several extreme security deficiencies with the hospital's
15 electronic health record system. Ms. Wilson was ultimately
16 terminated after notifying Ms. Heslep and Mr. Helgesen that she
17 objected to being wrongfully excluded from a meeting called to
18 create new Medicaid billing opportunities and to ANTHC's
19 purported attempt by ANTHC to claim the attorney-client privilege
20 precluded disclosure of a study that established serious concerns
21 over ANTHC's ability to protect health information maintained by
22 the organization and its tribal partners.
23
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1 41. Ms. Wilson notified Mr. Helgesen and Ms. Heslep
2 regarding her concerns on May 2, 2016 and May 3, 2016. ANTHC
3 terminated Ms. Wilson three days later. ANTHC, through its
4 leadership, also precluded Ms. Wilson from meeting with the
5 Ethics and Compliance Committee of the Board, to which Ms. Wilson
6 was to have dotted line authority. Ms. Wilson's attempts to
7 contest her termination and seek reinstatement from the full
8 Board, were blocked by Ms. Heslep (despite a direct conflict),
9 and other members of ANTHC's Board of Directors who received
10 additional Board assignments and compensation by staying in
11 Mr. Teuber's good graces. In fact, Ms. Wilson's attempt to
12 resolve her employment issues administratively were thwarted
13 by Mr. Teuber, who, in concert with Mr. Helgesen, approved
14 Ms. Wilson's termination. Mr. Teuber and Mr. Helgesen worked
15 in concert on employment decisions. Mr. Helgesen sought
16 Mr. Teuber's approval of any employment decision against ANTHC
17 or ANMC executives, including Garland MacDonald, Farah Madhani-
18 Lovely, M.D., Iris Grey, Manon Demientieff, Paul Franke, M.D.,
19 Memry Dahl, Mary Ford, Tracy Runyan-Traylor, and Patty
20 Paris, M.D.
21
22
23

24 42. Following Ms. Wilson's termination, Ms. Wilson
25 attempted to obtain employment in private practice. For at least
26

1 five months, Ms. Heslep and others made false and potentially
2 defamatory remarks regarding Ms. Wilson's tenure at ANTHC,
3 including by failing to provide a general reference unless
4 Ms. Wilson signed a waiver and release, and by providing
5 misleading information regarding Ms. Wilson's work at ANTHC.
6

7 **Facts Related to Employment Claims - Dr. Franke**

8 43. Dr. Franke received notice in early June that his
9 ANTHC contract would not be extended. This decision was made by
10 ANTHC, acting by and through Mr. Helgesen and Mr. Teuber.
11 Dr. Franke applied to work at ANTHC through a locum tenens
12 contract, where Dr. Franke could work at ANMC on a short term or
13 part-time basis. ANMC is significantly understaffed, and
14 Dr. Franke is over qualified to work at ANMC. Despite this,
15 Mr. Helgesen and Mr. Teuber precluded Dr. Franke from working at
16 ANMC.
17

18 **Count I - Retaliatory Discharge in**
19 **Violation of False Claims Act**
20 **(ANTHC, ROALD HELGESEN AND ANDREW TEUBER)**

21 Ms. Wilson and Dr. Franke incorporate paragraphs 1 through
22 43 as if fully set forth herein and further allege as follows:

23 44. By making good faith reports of improper acts and
24 compliance issues, both Ms. Wilson and Dr. Franke engaged in
25 activity protected by the False Claims Act.
26

1 45. ANTHC, Mr. Helgesen, and Mr. Teuber were aware of
2 Ms. Wilson's and Dr. Franke's complaints and had been for a
3 significant period of time.

4 46. Ms. Wilson was wrongfully terminated in retaliation
5 for engaging in that protected activity.

6 47. ANTHC, Mr. Helgesen, and Mr. Teuber failed to extend
7 or continue Dr. Franke's contract for services in retaliation
8 for engaging in protected activity.

9 48. ANTHC's, Mr. Helgesen's, and Mr. Teuber's wrongful
10 retaliation violated the False Claims Act and caused Ms. Wilson
11 and Dr. Franke to suffer damages in excess of \$100,000.00, the
12 precise amount to be determined at trial.

13 49. Ms. Wilson and Dr. Franke are entitled to all relief
14 afforded to them under the False Claims Act.

15
16
17 **Count II - Wrongful Termination**
18 **(ANTHC)**

19 Ms. Wilson and Dr. Franke incorporate paragraphs 1 through
20 49 as if fully set forth herein and further allege as follows:

21 50. The actions by ANTHC, Mr. Helgesen, and Mr. Teuber,
22 including retaliating and terminating Ms. Wilson's employment
23 and Dr. Franke's contract, constitute the tort of wrongful
24

1 termination in violation of the public policy of the State of
2 Alaska.

3 51. As a result of ANTHC's, Mr. Helgesen's and
4 Mr. Teuber's wrongful termination in violation of public policy,
5 Ms. Wilson and Dr. Franke suffered damages in excess of
6 \$100,000.00, the precise amount to be determined at trial.
7

8 **Count III - Breach of Covenant of Good Faith and Fair Dealing**
9 **(ANTHC)**

10 Ms. Wilson and Dr. Franke incorporate paragraphs 1 through
11 51 as if fully set forth herein and further allege as follows:

12 52. In Alaska, all employment relationships contain an
13 implied covenant of good faith and fair dealing.

14 53. ANTHC, through Mr. Helgesen and Mr. Teuber breached
15 the covenant of good faith and fair dealing when it terminated
16 Ms. Wilson and Dr. Franke without cause and in retaliation after
17 they reported violations of state and federal law and internal
18 policy and exposed compliance issues.
19

20 54. As a result of ANTHC's, Mr. Helgesen's and
21 Mr. Teuber's breach of the covenants of good faith and fair
22 dealing, Ms. Wilson and Dr. Franke suffered damages in excess of
23 \$100,000.00, the precise amount to be determined at trial.
24
25
26

1 2. That pre and post-judgment interest be awarded, along
2 with reasonable attorney's fees, costs and expenses incurred by
3 Ms. Wilson and Dr. Franke in bringing this case;

4 3. That this Court award such other relief as it deems
5 proper.
6

7 DATED this 15th day of August 2018, at Anchorage, Alaska.

8 DILLON & FINDLEY, P.C.
9 Attorneys for Plaintiffs

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17 **CERTIFICATE OF SERVICE**

18 I hereby certify that on August 15,
19 2018 a copy of the foregoing
20 Plaintiffs' Second Amended Complaint
21 and Demand for Jury Trial was served
22 electronically through the CM/ECF
23 system on Nicholas C. Perros, Richard
24 L. Pomeroy, and Richard D. Monkman.

25 s/Molly C. Brown
26

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6
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8

9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE DISTRICT OF ALASKA AT ANCHORAGE

11
12 JOAN WILSON and)
PAUL FRANKE, M.D.,)
13)
Plaintiffs,)
14 vs.)
15)
ALASKA NATIVE TRIBAL)
16 HEALTH CONSORTIUM,)
17 Defendant.) Case No. 3:16-cv-00195-JWS
18 _____)

19 [PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION TO AMEND
20 FIRST AMENDED COMPLAINT

21 This matter having come before the Court, and the Court
22 being fully advised,
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25

26 [PROPOSED] ORDER GRANTING PLS.' MOT. TO AMEND FIRST AMENDED COMPLAINT
Joan Wilson & Paul Franke, M.D. v. Alaska Native Tribal Health Consortium
Case No. 3:16-cv-00195-TMB

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IT IS HEREBY ORDERED that Plaintiffs' Motion to Amend First Complaint is GRANTED. The Second Amended Complaint, lodged with the Court, is hereby deemed filed.

DATED: _____
The Honorable Timothy M. Burgess
United States District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on August 15, 2018 a copy of the foregoing [Proposed] Order Granting Plaintiffs' Motion to Amend First Amended Complaint was served electronically through the CM/ECF system on Nicholas C. Perros, Richard L. Pomeroy, and Richard D. Monkman.

s/Molly C. Brown