

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

UNITED STATES OF AMERICA <i>ex.rel.</i>)	
ELIN BAKLID-KUNZ)	
)	
Relator)	
)	
vs.)	CASE NO.: 6-09-CV-1002
)	
HALIFAX HOSPITAL MEDICAL CENTER)	FILED UNDER SEAL
d/b/a HALIFAX HEALTH a/k/a HALIFAX)	[FALSE CLAIMS ACT – QUI TAM]
COMMUNITY HEALTH SYSTEM a/k/a)	
HALIFAX MEDICAL CENTER and)	
HALIFAX STAFFING, INC.)	
)	
Defendants)	
)	

MOTION TO DISMISS SECOND AMENDED COMPLAINT

Pursuant to Fed. R. Civ. P. 12(b)(6), 12(b)(1), and 9(b), Defendants Halifax Hospital Medical Center d/b/a Halifax Health a/k/a Halifax Community Health System a/k/a Halifax Medical Center and Halifax Staffing, Inc. (collectively “Halifax”) by its undersigned counsel, respectfully move the Court for an order dismissing with prejudice the Second Amended Complaint (“the Complaint”) in this action for the following reasons: (1) Relator Elin Baklid Kunz’s (“Relator”) *qui tam* claims fail because Halifax is immune from suit under the False Claims Act (“FCA”) under the Eleventh Amendment Sovereign Immunity Clause; (2) Relator’s claims are prohibited by the FCA’s public disclosure bar and, therefore, this Court lacks subject matter jurisdiction to consider this case; and (3) Relator has failed to plead plausible facts supporting the elements of her FCA, Stark Law, and Anti-Kickback Statute

claims. With respect to (3), the Complaint fails to plead fraud with particularity and, even under a more lenient pleading standard, fails to meet the pleading requirements of the Eleventh Circuit and the Middle District of Florida. The Court should dismiss the Complaint in its entirety with prejudice as the United States Department of Justice has chosen not to intervene in this action and plaintiff has had ample time – 18 months – to investigate the claims.

A Memorandum of Law in support of this motion is filed herein.

Dated: March 15, 2011

Respectfully submitted,

s/ Anthony N. Upshaw

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