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8

9 **UNITED STATES DISTRICT COURT**  
10 **NORTHERN DISTRICT OF CALIFORNIA**  
11 **SAN FRANCISCO HEADQUARTERS**

12 UNITED STATES OF AMERICA, )  
13 Plaintiff, )  
14 v. ) CASE NO. CV-12-4024 LB  
15 California Rural Indian Health Board, Inc., ) **FIRST AMENDED COMPLAINT**  
16 Defendant. )  
17 \_\_\_\_\_ )  
18 )

19 The United States files this Amended Complaint pursuant to Fed. R.Civ.P.15(a)(1)(B).

20 **I. INTRODUCTION**

21 1. The United States brings this action pursuant to the False Claims Act (hereinafter the Act),  
22 31 U.S.C. §§ 3729-3733 (2008), and common law. The Act provides that an individual or entity that  
23 causes false or fraudulent claims for payment to be submitted to the government is liable for treble  
24 damages, as well as civil penalties of up to \$11,000 for each false or fraudulent claim.

25 2. This action concerns false and/or fraudulent claims that Defendant submitted or caused to  
26 be submitted to U.S. Department of Health and Human Services (“HHS”), Substance Abuse and  
27 Mental Health Services Administration (hereinafter “SAMHSA”). Defendant systematically  
28 defrauded SAMHSA by submitting false and fraudulent claims for payment under the Access to

1 Recovery (hereinafter “ATR”) program administered by SAMHSA.

2 **II. JURISDICTION**

3 3. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331  
4 and 1345, and supplemental jurisdiction over the common law and equitable claims pursuant to 28  
5 U.S.C. § 1367(a). The Court may exercise personal jurisdiction over Defendant pursuant to 31  
6 U.S.C. § 3732(a).

7 4. Intradistrict Assignment to the San Francisco Division of the Court is proper because the  
8 Defendant’s conduct occurred in substantial part in Alameda, Del Norte, Humboldt, Lake, Marin,  
9 Mendocino, San Mateo, and Sonoma counties.

10 **III. VENUE**

11 5. Venue is proper in this district pursuant to 31 U.S.C. § 3732 because Defendant committed  
12 acts within this district that violated 31 U.S.C. § 3729.

13 **IV. THE PARTIES**

14 6. Plaintiff the United States administers the ATR program through SAMHSA, the federal  
15 agency responsible for meeting the substance abuse and mental health treatment needs of individuals  
16 nationwide.

17 7. Defendant California Rural Indian Health Board, Inc., (hereinafter “CRIHB”) is a  
18 California corporation located in Sacramento, California. At all times relevant hereto, CRIHB was  
19 the recipient of an ATR Grant awarded by SAMHSA in 2004 to administer a voucher program for  
20 American Indians and Alaskan Native in California, who needed treatment and recovery support for  
21 alcohol and drug abuse.

22 **V. THE ACCESS TO RECOVERY GRANT**

23 8. The ATR program is a voucher initiative to provide client choice among substance abuse  
24 treatment and recovery support service (hereinafter “RSS”) through providers, also known as  
25 contractors or sub-recipients of the Grant. The voucher system ensured that funding to providers was  
26 made indirectly, through a voucher issued to the client. The client, rather than the government or an  
27 intermediary organization, would take the voucher to a provider of the client’s choosing, and the  
28 provider would receive payment after the service was rendered.

1           9. In March 2004, SAMHSA, through the Center for Substance Abuse Treatment, announced  
2 that it was accepting applications for ATR grants under sections 501(d)(5) and 509 of the Public  
3 Health Service Act, 42 U.S.C. §§ 290aa(d)(5), 290bb-2 (hereinafter the “Grant Announcement”).

4           10. On June 4, 2004, Defendant applied for a three-year ATR Grant,  
5 seeking \$39 million to administer a voucher program, the California American Indian Recovery  
6 (“CAIR”) program, through a coalition of tribal health care entities and treatment and recovery  
7 support service providers, and to service in excess of 13,000 clients (hereinafter the “Grant  
8 Application”).

9           11. On August 2, 2004, SAMHSA awarded Defendant a \$17.140 million, three-year grant,  
10 Grant #1 H79 TI16840-01 (hereinafter the “Grant”) to manage the CAIR program. Of that amount,  
11 approximately \$2.72 million was allotted for Defendant’s administrative expenses. SAMHSA’s  
12 Notice of Grant Award stated that Defendant’s “organization is legally and financially responsible for  
13 all aspects of this grant, including funds provided to sub-recipients.” In the three year Grant period  
14 Defendant was required to serve at least 6,697 clients: At least 1,197 during the first year, and at least  
15 2,752 in the second and third years. With respect to these client service projections, SAMHSA’s  
16 Notice of Grant Award stated: “Failure to comply with the above stated condition of award may result  
17 in a restriction placed on your Payment Management System account or denial of continuation  
18 funding.”

19           12. Grant award payments were available to Defendant through an account established with  
20 the Payment Management System (“PMS”) of the HHS Office of the Deputy Financial Assistant  
21 Secretary, Division of Federal Assistance Financing. Throughout the years of the Grant, SAMHSA  
22 disbursed award payments into the Grant PMS account from which Defendant made withdrawals.  
23 SAMHSA made the first disbursement in 2004, in the amount of \$5,713,538, and the remainder of  
24 the disbursements were made thereafter through the life of the Grant. The August 2, 2004, Notice of  
25 Grant Award stated: “As a Grantee Organization, you Acknowledge Acceptance of the Grant Terms  
26 and Conditions by Drawing or Otherwise Obtaining Funds from the Payment Management System.”

27           13. The Grant was subject to annual renewal during the three-year grant period. Defendant  
28

1 submitted two subsequent Grant Applications on March 11, 2005 and March 15, 2006, requesting  
2 renewal of the Grant subject to the same conditions on which the original Grant Award was made.  
3 SAMHSA approved both renewals. The Executive Director of CRIHB, James Crouch, executed all  
4 the Grant Applications and certifications as required by the grant award, on behalf of Defendant  
5 CRIHB. The Grant Applications contained statements or certifications that Defendant had complied  
6 with all provisions of the initial grant Application, including but not limited to, conducting the  
7 requisite substance abuse screening and assessments.

8 14. In accepting the Grant, Defendant was subject to the requirements stated in the Grant  
9 Announcement and other terms and conditions,, including but not limited to: the promises made in  
10 the Grant Applications; the terms and conditions of the Grant as stated in SAMHSA's Award Notices  
11 issued during the life of the grant; the grant program legislation; the regulations at 45 C.F.R. Parts 74  
12 and Part 92; the HHS Grant Policy Statement ("GPS"), Office of the Assistant Secretary for  
13 Resources and Technology, Office of Grants (January 1, 2007); the Office of Management and  
14 Budget (OMB) Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations,  
15 6/27/2003 and 6/26/2007); and OMB Circular A-122 (Cost Principles for Nonprofit Organizations,  
16 5/10/2004) (collectively hereinafter the "Grant Rules").

17 15. Defendant expressly and impliedly stated that it was in compliance with the Grant Rules  
18 in its Grant applications, Grant reports, no-cost extension and carryover requests, and every time it  
19 drew, obtained, or requested funds from Grant award account, or the Grant payment system.  
20 SAMHSA relied on Defendant to comply with the Grant Rules.

21 16. In order to determine the appropriate level of care for either clinical treatment or RSS, the  
22 Grant Rules required that Defendant ensure that each person receive a substance abuse screening.  
23 The substance abuse screening was intended to distinguish individuals who did not have alcohol or  
24 substance abuse problems from those who were at risk for substance abuse and needed treatment  
25 and/or recovery support services. Traditional screening instruments that could be used included the  
26 CAGE questionnaire (a four-question form to detect the possibility of alcoholism), the CRAFFT  
27 questionnaire, and the AADIS questionnaire (which screened children and adolescents for drug and  
28

1 alcohol abuse).

2 17. The Grant Rules also required that individuals who screened positive for substance abuse  
3 were to receive an assessment to gauge the clinical treatment and RSS options likely to be most  
4 appropriate for the individual. Assessment tools for adults included the Addiction Severity Index  
5 (“ASI”), Substance Use Disorders Diagnostic Schedule (“SUDDS-IV”), and for adolescents the  
6 Comprehensive Adolescent Severity Inventory (“CASI”). Pursuant to the Grant Announcement, the  
7 “assessment must occur prior to any referral of the individual to a particular kind of clinical treatment  
8 and/or recovery support service.”

9 18. In implementing the ATR program, grantees, including Defendant CRIHB, were required  
10 to make periodic financial reports to SAMHSA about the administration of the award, and to provide  
11 SAMHSA with outcome data pursuant to the Government Performance and Results Act (“GPRA”).  
12 Information gathered from clients during the screening and assessment stage was necessary to meet  
13 the GPRA reporting requirements.

14 19. Eligible RSS authorized under the Grant Rules included sober living transitional housing,  
15 child care, relapse prevention, case management, family counseling, transportation to and from  
16 treatment, and job training, among others. Sober living housing is transitional housing where the  
17 individual can adjust to living and working in a clean and sober environment, while attending  
18 treatment or 12-step programs.

19 20. Although Defendant utilized tribal and nontribal providers to furnish treatment and  
20 services, under the Grant Rules Defendant alone remained ultimately responsible for the providers’  
21 conduct. *See, e.g.*, 45 C.F.R. §§ 74.41, 74.51.

## 22 **VI. THE FRAUDULENT SCHEME AND FALSE CLAIMS**

23 21. From the beginning of the Grant period in 2004, Defendant had difficulty meeting the  
24 client enrollment goals specified in the Grant Applications and Awards, and embarked on a scheme to  
25 increase their enrollment numbers and expend all Grant funds by ignoring the Grant Rules.

26 22. In 2004, Defendant contracted with James Ward and Associates Inc., and in 2005, with  
27 Turtle Health Plan Inc., to provide advice to the CAIR program, without complying with the  
28

1 solicitation requirements of 45 C.F.R. Parts 74, and other Grant Rules. Mr. Ward had written the  
2 June 4, 2004 Grant Application, pursuant to a contract with Defendant which promised him a salary  
3 of \$100,000 annually should the Grant be awarded. Turtle Health Plan Inc., was indebted to  
4 Defendant in the amount of approximately \$300,000 at the time it entered into the contract with  
5 Defendant. Both of these circumstances created prohibited conflicts of interest in violation of Grant  
6 Rules, including but not limited to, 45 C.F.R. Parts 74. Defendant compensated James Ward and  
7 Associates, Inc., and the Turtle Health Plan Inc., from Grant award funds, in violation of the Grant  
8 Rules.

9 23. Beginning in 2005, Defendant gave providers client enrollment applications with  
10 instructions to evaluate clients' needs for RSS without conducting the required substance abuse  
11 screening or assessments. Instead, providers were asked to "evaluate" clients' needs for RSS simply  
12 by checking off the items and services to be provided through vouchers.

13 24. Because Defendant had eliminated the substance abuse screening and assessments,  
14 providers had difficulty determining who was eligible for RSS. As a result, providers enrolled and  
15 gave vouchers to individuals who were not in treatment, were not addicts, and were not in substance  
16 abuse recovery, and therefore were not eligible for RSS.

17 25. Beginning in 2006, Defendant instructed providers to pay ineligible items and services,  
18 including but not limited to, clients' rent and utilities, mortgage payments, automobile tires, repairs  
19 and related auto expenses, court fines and fees, and personal expenses, and other expenses unrelated  
20 to alcohol or substance abuse treatment, or recovery, and charged the expenses to the Grant as RSS.  
21 All of these expenses were prohibited and unallowable by the Grant Rules, and were ineligible for  
22 funding by the Grant. Defendant instructed providers to pay for the expenses themselves out of the  
23 providers' pockets, and then reimburse themselves with the vouchers. This procedure was prohibited  
24 by the Grant Rules, in that all services had to be provided pursuant to a voucher issued to the client,  
25 based on substance abuse screening and assessment, and taken by the client to the client's provider of  
26 choice.

27 26. Beginning in 2006, Defendant instructed providers to give clients American Express and  
28 other cash and gift cards instead of vouchers. Such cash cards were utilized by the providers until

1 SAMHSA learned of the conduct and ordered Defendant to stop. The Grant prohibited giving cash  
2 equivalents to clients as all client services had to be provided pursuant to a voucher based on a  
3 substance abuse screening and assessment, and taken by the client to the client's provider of choice.

4 27. On June 15, 2006, Defendant approved the "backdating" of several vouchers in order to  
5 reimburse a provider for services it had allegedly rendered without the requisite vouchers. Some of  
6 the services dated as far back as 2005. In backdating the vouchers, Defendant violated the Grant  
7 Rules, including but not limited to the Grant announcement which provided that Defendant would  
8 "require all substance abuse assessment[s], clinical treatment, and recovery support services . . . [to]  
9 be provided pursuant to a voucher or vouchers given to a client."

10 28. In October 2006, Defendant eliminated the residential clinical treatment program in favor  
11 of RSS vouchers. A residential treatment program is a substance abuse treatment program that offers  
12 continuous 24-hour a day, observation, monitoring, and treatment by professional and licensed staff,  
13 to individuals who are not sufficiently stable to benefit from outpatient treatment. As a result, several  
14 tribal providers were forced to turn away clients who were in need of alcohol and substance abuse  
15 treatment. Despite protests from tribal providers, Defendant did not restore the residential clinical  
16 treatment program until January 2007.

17 29. Beginning in 2006, Defendant instructed providers to drive clients directly to retail stores,  
18 pay for the clients' purchases out of the provider's pockets, and then reimburse themselves with the  
19 vouchers for their out of pocket expenses. This procedure was prohibited by the Grant Rules, in that  
20 all services had to be provided pursuant to a voucher issued to the client, based on a substance abuse  
21 screening and assessment, and taken by the client to the client's provider of choice. In many of these  
22 instances, the entire voucher amount allotted for RSS was spent on a single retail purchase. For  
23 example, in one instance in 2007, a client was permitted to buy \$1,275 in clothing at a J.C. Penny  
24 store, but no appropriate RSS was provided.

25 30. In May 2007, Defendant more than doubled the single amount of the RSS voucher that  
26 could be given to a client every 61 days, as an incentive for clients to sign up with the CAIR program.  
27 On June 30, 2007, Denise Pollard, member of Defendant's Finance Committee, questioned this  
28 decision. Mr. James Crouch dismissed the concern stating the recovery support service award was

1 “designed by Uncle Sam to, in essence, wrap this fragile abuser. . . .”

2 31. On June 5, 2008, defendant issued an overpayment determination to Round Valley Indian  
3 Health Center of Yuki Trails (“Round Valley”), an ATR provider and sub-recipient, in the amount of  
4 \$478,788.43. Defendant alleged, among other things, that Round Valley had charged unallowable  
5 expenses to CAIR by failing to enroll individuals who were recovering from or were diagnosed with a  
6 substance abuse disorder, and by failing to complete a screening or assessment for clinical treatment  
7 or recovery support services. As the recipient of the ATR Grant, Defendant was obligated to repay  
8 SAMHSA the overpaid sum pursuant to the Grant Rules and 45 C.F.R. § 74.41, among others. To  
9 date, Defendant has not repaid that amount.

10 32. Rather than repaying SAMHSA, on July 9, 2008, Defendant referred Round Valley to the  
11 U.S. Department of Health and Human Services, Office of Inspector General, and the U.S. Attorney’s  
12 Office for the Northern District of California, for investigation in connection with the overpayment.

13 33. Of the \$3,200,000 paid in RSS vouchers during the three-year Grant period, nearly  
14 \$1,200,000 was paid for unallowable housing expenses, most of which include but are not limited to,  
15 an individual’s rent and utilities and mortgage payments. These expenses were prohibited under the  
16 Grant in that only sober living transitional housing was an allowed housing expense. In excess of  
17 \$800,000 was paid for ineligible personal necessities, including but not limited, to expensive  
18 clothing, car tires and repairs. These were ineligible Grant expenses that Defendant inappropriately  
19 charged to the Grant as RSS. In contrast, eligible RSS categories that related to substance abuse  
20 treatment or sobriety, such as child care, recovery coaching, and family services, accounted for only a  
21 negligible fraction of the vouchers issued during the life of the Grant.

22 34. By the foregoing acts, Defendant acted in violation and reckless disregard of the Grant  
23 Rules.

24 **FIRST CAUSE OF ACTION**

25 (False Claims Act: Presentation of False Claims; 31 U.S.C. § 3729(a)(1) (2008))

26 35. Plaintiff repeats and realleges paragraphs 1 through 34 as fully set forth herein.

27 36. Defendant knowingly presented or caused to be presented false or fraudulent claims for  
28 payment or approval to the United States. Such false claims include, but are not limited to, each and



1 every time Defendant made a draw from the Grant PMS account.

2 37. By virtue of the false or fraudulent claims made by Defendant, the United States suffered  
3 damages and therefore is entitled to statutory damages under the Act, to be determined at trial, plus  
4 civil penalties.

5 **SECOND CAUSE OF ACTION**

6 (False Claims Act: Making or Using False Record or Statement to Cause False Claim to be Presented;  
7 (31 U.S.C. § 3729(a)(2) (2008))

8 38. Plaintiff repeats and realleges paragraphs 1 through 34 as if fully set forth herein.

9 39. Defendant knowingly made, used, or caused to be made or used, false records or false  
10 statements to get false or fraudulent claims paid or approved by the United States. Such false records  
11 or statements include, but are not limited to, the Grant applications and related documents, Grant  
12 reports, and complaints about providers' conduct that Defendant submitted to SAMHSA and to the  
13 United States.

14 40. By virtue of the false records or false statements made by Defendant in support of false or  
15 fraudulent claims, the United States suffered damages and therefore is entitled to statutory damages  
16 under the Act, to be determined at trial, plus civil penalties.

17 **THIRD CAUSE OF ACTION**

18 (False Claims Act: Making or Using False Record or Statement to Conceal, Avoid, or Decrease an  
19 Obligation to Pay Money to the United States; (31 U.S.C. § 3729(a)(7) (2008))

20 41. Plaintiff repeats and realleges paragraphs 1 through 34 as set forth herein.

21 42. Defendant knowingly made, used, or caused to be made or used, false records or false  
22 statements to conceal, avoid or decrease obligations to pay or transmit money or property to the  
23 United States, including but not limited to, an obligation to repay SAMHSA for overpayments. Such  
24 false records or statements were made in including but not limited to, Grant Applications and related  
25 documents, Grant reports, and complaints about providers' conduct that Defendant submitted to  
26 SAMHSA and to the United States.

27 43. By virtue of the false records or false statements made by Defendant to avoid, or decrease  
28 an obligation to pay, the United States suffered damages and therefore is entitled to statutory damages

1 under the Act, to be determined at trial, plus civil penalties.

2 **FOURTH CAUSE OF ACTION**

3 (Recoupment of Payment by Mistake)

4 44. Plaintiff repeats and realleges paragraphs 1 through 34 as if fully set forth herein.

5 45. This is a claim for recoupment of monies paid by the United States as a result of mistaken  
6 understandings of fact.

7 46. The United States, acting in reasonable reliance on the truthfulness of Defendant's  
8 certifications and representations, paid Defendant CRIHB certain sums of money to which it was not  
9 entitled, and Defendant is therefore liable to account and return such amounts, which are to be  
10 determined at trial, to the United States.

11  
12 **FIFTH CAUSE OF ACTION**

13 (Unjust Enrichment)

14 47. Plaintiff repeats and realleges paragraphs 1 through 34 as if fully set forth herein.

15 48. This is a claim for the recovery of monies by which Defendant has been unjustly  
16 enriched.

17 49. By directly or indirectly obtaining or not returning Grant funds to which Defendant was  
18 not entitled, including but not limited the award allotted for Defendant's administrative expenses,  
19 provider overpayments, and sums charged to the Grant award for ineligible RSS, Defendant was  
20 unjustly enriched, and is liable to account and pay such amounts, or the proceeds therefrom, which  
21 are to be determined at trial, to the United States.

22 **SIXTH CAUSE OF ACTION**

23 (Breach of Contract)

24 50. Plaintiff repeats and realleges paragraphs 1 through 34 as if fully set forth herein.

25 51. This is a claim for breach of Defendant's contractual obligations to the United States.

26 52. The United States paid Defendant all monies owed under the Grant, but Defendant  
27 breached its contractual obligations under the Grant and is therefore liable to pay to the United States  
28 such contractual damages as may be determined at trial.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, the United States demands and prays that judgment be entered in its favor  
3 against Defendant, as follows:

4 1. On the First, Second and Third Causes of Action under the False Claims Act:

5 (A) For three times the amount of the damages the United States has sustained as a  
6 result of Defendant's unlawful conduct;

7 (B) For a civil monetary penalty of \$11,000 for each false or fraudulent claim  
8 submitted to the United States; and

9 (C) For a permanent injunction enjoining Defendant, and each of them, from violating  
10 the False Claims Act, 31 U.S.C. § 3729 *et seq.*

11 2. On the Fourth Cause of Action for Recoupment, for the amounts by which Defendant  
12 retained illegally, plus pre-judgment interest, costs, and expenses.

13 3. On the Fifth Cause of Action for Unjust Enrichment, for the amounts by which Defendant  
14 was unjustly enriched, which Defendant retained illegally, plus pre-judgment interest, costs, and  
15 expenses.

16 4. On the Sixth Cause of Action for Breach of Contract, for contractual damages, plus pre-  
17 judgment interest, costs, and expenses.

18 5. On all Causes of Action, for such further relief as the Court deems just and proper.

19 Respectfully submitted,

20 MELINDA HAAG  
21 United States Attorney

22 DATED: August 31, 2012

By:

/s/

23 \_\_\_\_\_  
24 Gioconda R. Molinari  
25 Douglas Chang  
26 Assistant United States Attorney  
27 Attorneys for Plaintiff the United States of America  
28