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FILED

MAR 30 2015

RICHARD W. WIEKING
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE

7 Attorneys for the United States of America

8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA
 10 SAN JOSE DIVISION

11 UNITED STATES OF AMERICA *ex.*)
rel. CHRISTOPHER KAES; and KAES)
 12 ENTERPRISES, LLC,)
 13 Plaintiffs,)
 14 v.)
 15 DOGWOOD CREEK)
 CONSTRUCTION, LLC., et al.,)
 16 Defendants.)

Case No. CV 12-02887 HRL

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

~~FILED UNDER SEAL~~

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

21 Although the United States declines to intervene, it respectfully refers the Court to 31 U.S.C.
 22 § 3730(b)(1), which allows the relator to maintain the action in the name of the United States; providing,
 23 however, that the “action may be dismissed only if the court and the Attorney General give written
 24 consent to the dismissal and their reasons for consenting.” *Id.* The United States Court of Appeals for
 25 the Ninth Circuit has held that, notwithstanding this language, the United States only has the right to a
 26 hearing when it objects to a settlement or dismissal of the action. *U.S. ex rel. Green v. Northrop Corp.*,
 27

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

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

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

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20
21
22 Respectfully submitted,

23 MELINDA HAAG
24 United States Attorney

25 Dated: February 3, 2015

26 By:


27 _____
28 SARA WINSLOW
Assistant United States Attorney

1 **[PROPOSED] ORDER TO UNSEAL**

2 The United States having declined to intervene in this action pursuant to the Federal False
3 Claims Act, 31 U.S.C. § 3730(b)(4)(B), the Court rules as follows. IT IS HEREBY ORDERED that:

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

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

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

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

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

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

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

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

22 IT IS SO ORDERED.

23 Dated: 3/26/15

24 
25 _____
26 HOWARD R. LLOYD
27 United States Magistrate Judge _____
28

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**

8 Bruce P. Babbitt
9 Jameson Babbitt Stites & Lombard, PLLC
10 999 Third Avenue, 1900
11 Seattle, WA 98104

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

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

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

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

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

23 **BY FEDERAL EXPRESS**

24 I declare under penalty of perjury under the laws of the State of California that the foregoing is
25 true and correct. Executed February 3, 2014 at San Francisco, California

26 
27 KATHY TERRY
28 Legal Assistant