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 11 *Attorneys for CREEKSIDE HOSPICE II, LLC,*
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 12 *SKILLED HEALTHCARE, LLC*

13 **UNITED STATES DISTRICT COURT**
 14 **DISTRICT OF NEVADA**

15 UNITED STATES OF AMERICA, et al., 16 Plaintiffs, 17 v. 18 CREEKSIDE HOSPICE II, LLC, et al., 19 Defendants, 20 21 AND ALL RELATED ACTIONS. 22
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Case No.: 2:13-cv-00167-APG-PAL

JOINT STATUS REPORT

23 Plaintiffs United States of America, Joanne Cretney-Tsosie, and Veneta Lepera and
 24 Defendants Creekside Hospice II, LLC, Skilled Healthcare Group, Inc., and Skilled Healthcare,
 25 LLC (all hereinafter referred to as “Creekside”), submit the foregoing Joint Status Report
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1 pursuant to the Court's September 2, 2016 Order (Dkt. #162) and the Court's November 7, 2016
2 Order granting the parties' Joint Motion to Stay Action Until February 28, 2017. (Dkt. #183).¹

3 **I. Background and Status of Discovery**

4 This action is brought by the United States and Relators Joanne Cretney-Tsosie and
5 Veneta Lepera under the False Claims Act against a hospice provider, Creekside Hospice, and its
6 corporate parent, Skilled Healthcare. The gravamen of the action is that Creekside violated the
7 False Claims Act by knowingly submitting or causing the submission of false claims to Medicare
8 False Claims Act by knowingly submitting or causing the submission of false claims to Medicare
9 for reimbursement for hospice services for patients who were ineligible for coverage in the time
10 period 2010 to 2013. These allegations are disputed and Creekside filed a motion to dismiss the
11 action in August 2015. (Dkt. #98).² Discovery commenced in June 2015 and is not completed by
12 the parties. There is no Scheduling Order in this action. The parties' unresolved discovery
13 disputes are set forth in Status Reports that were filed in September 2015. (Dkt. #111-13). A
14 temporary stay against depositions of current and former employees was granted by the Court in
15 September 2015, and no expert discovery has occurred. (Dkt. #114).

17 Throughout 2016, the United States and Creekside engaged in significant and productive
18 discussions pertaining to settlement of the action. The parties filed a Joint Unopposed Motion to
19 Stay Action for Ninety Days Pending Settlement Discussions on June 2, 2016 (Dkt. #159). The
20 Court granted that Motion on June 15, 2016. (Dkt. #160). On September 1, 2016, the parties filed
21 a joint Motion to Continue Stay until November 15, 2016 (Dkt. #161), which the court granted on
22 September 2, 2016 (Dkt. #162). On November 7, 2016, the Court extended the stay until January
23 6, 2017. (Dkt. #173). On January 6, 2017, the Court extended the stay until February 28, 2017.

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¹ Counsel for Relator Lepera has not replied when asked to approve the final version of this Status Report.

28 ² In light of the parties' agreement in principle to settle the dispute, the Court dismissed without prejudice
Creekside's Motion to Dismiss as moot. (Dkt. #162).

1 (Dkt. 183). The parties seek an additional stay to April 28, 2017 to finalize the settlement
2 documents related to this action.

3 **II. Settlement Agreement and Other Outstanding Issues**

4 The United States and Creekside have reached an agreement in principle pertaining to
5 settlement of the action. The parties need additional time to obtain the necessary approvals for
6 the proposed settlement, including the approval of the Acting Assistant Attorney General for the
7 Civil Division and the United States Attorney for the District of Nevada.

8
9 In addition, Relator Cretney-Tsosie and Defendants are currently negotiating Relator's
10 statutory attorneys' fees and costs pursuant to 31 U.S.C. § 3730(d). If these negotiations are not
11 successfully concluded by the time the action is dismissed, Relator Cretney-Tsosie will file a
12 motion for attorneys' fees consistent with Local Rule 54-14.

13
14 Finally, in the event Relator Cretney-Tsosie and the Government are unable to reach an
15 agreement as to the percentage for her relator's award pursuant to 31 U.S.C. § 3730(d), Relator
16 Cretney-Tsosie will file a motion with the Court to resolve the share issue.

17 **III. Motion to Continue the Court's November 7, 2016 Order Staying this Action**

18 The parties respectfully request that the Court continue its stay until April 28, 2017 in
19 order to give the parties time to obtain the necessary approvals for the proposed settlement and to
20 execute the agreement and submit dismissal papers to the Court. The parties request that the stay
21 exclude adjudication of Plaintiff/Relator Cretney-Tsosie's Motion to Dismiss the Complaint of
22 Plaintiff/Relator Lepera ("Motion to Dismiss") (Dkt. 166), which is now fully briefed and raises
23 an issue that will not be resolved by the Settlement Agreement. A stay will assure that the Court
24 does not engage in case activity unnecessarily and will reduce the burden and expense of the
25 litigation process for the parties. A Motion to Continue Stay Until April 28, 2017 and proposed
26 order accompanies this Joint Status Report.
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1 Dated: February 23, 2017

Respectfully submitted,

2 *Counsel for Defendants Creekside Hospice II,*
3 *LLC, Creekside Home Care II, LLC, Skilled*
4 *Healthcare Group, Inc. and Skilled Healthcare,*
5 *LLC.*

6 /s/ Kathleen McDermott

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13 **UNITED STATES DISTRICT COURT**
14 **DISTRICT OF NEVADA**

15 UNITED STATES OF AMERICA, et al.,

16 Plaintiffs,

17 v.

18 CREEKSIDE HOSPICE II, LLC, et al.,

19 Defendants,

20 AND ALL RELATED ACTIONS.
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22

Case No.: 2:13-cv-00167-APG-PAL

**JOINT MOTION TO CONTINUE STAY
UNTIL APRIL 28, 2017**

23 Plaintiffs United States of America, Joanne Cretney-Tsosie and Defendants Creekside
24 Hospice II, LLC, Skilled Healthcare Group, Inc., and Skilled Healthcare, LLC (all hereinafter
25 referred to as “Creekside”), jointly move to continue the stay in this action until April 28, 2017,
26 except for the Court’s adjudication of Plaintiff/Relator Cretney-Tsosie’s Motion to Dismiss the
27 Complaint of Plaintiff/Relator Lepera (“Motion to Dismiss”), (Dkt. 166), which is fully briefed,
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1 based upon an agreement in principle between the United States and Creekside to settle this
2 action, subject to approval of Department of Justice officials. A stay will allow the parties to
3 execute the agreement and file the necessary paperwork with the Court to dismiss the action.
4 This stay will prevent additional burden on the Court and unnecessary burden and expense to the
5 parties. All parties to the action consent to the request for a stay.
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7 **WHEREFORE**, Plaintiffs United States of America, et al., and Defendants' Creekside
8 Hospice, et al., move this Honorable Court to:

- 9 A. Grant their Joint Motion to Continue Stay; and
10 B. Enter an order staying this case in its entirety until April 28, 2017.
11

12 Dated: February 23, 2017

Respectfully submitted,

*Counsel for Defendants Creekside Hospice II,
14 LLC, Creekside Home Care II, LLC, Skilled
15 Healthcare Group, Inc. and Skilled Healthcare,
16 LLC.*

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17 IT IS SO ORDERED.


UNITED STATES DISTRICT JUDGE

Dated: February 23, 2017.

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