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 11 *Attorneys for CREEKSIDE HOSPICE II, LLC,*
SKILLED HEALTHCARE GROUP INC. and
 12 *SKILLED HEALTHCARE, LLC*

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

15 UNITED STATES OF AMERICA, et al.,

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

16 Plaintiffs,

17 v.

18 CREEKSIDE HOSPICE II, LLC, et al.,

**ORDER GRANTING
 JOINT MOTION TO STAY PETITION
 FOR ATTORNEYS' FEES AND COSTS
 UNDER LOCAL RULE 54-14**

19 Defendants,

20 AND ALL RELATED ACTIONS.
 21

22
 23 Plaintiff Relator Joanne Cretney-Tsosie (“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 stay any determination of reasonable expenses
 26 necessarily incurred and reasonable attorneys’ fees and costs, pending the Court of Appeals for
 27 the Ninth Circuit resolution of Relator Veneta Lepera’s appeal of this court’s March 30, 2017
 28

1 order (Dkt. 189) granting Cretney-Tsosie’s Motion to Dismiss the Complaint of Relator Veneta
2 Lepera. (Dkt. 166), which resolved the first-to-file issue in Relator Cretney-Tsosie’s favor, and
3 denying Relator Veneta Lepera’s Motion to Dismiss Relator Cretney-Tsosie (Dkt. 188).

4 **I. Argument**

5 This action was brought by the United States and Relators Joanne Cretney-Tsosie and
6 Veneta Lepera under the False Claims Act against a hospice provider, Creekside Hospice, and its
7 corporate parent, Skilled Healthcare. The gravamen of the action is that Creekside violated the
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 were disputed and Creekside filed a motion to dismiss the
11 action in August 2015. (Dkt. #98).¹

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14 On October 24, 2016, Cretney-Tsosie filed a Motion to Dismiss the Complaint of
15 Plaintiff/Relator Veneta Lepera. (Dkt. 166). On March 29, 2017, Lepera filed a Motion to
16 Dismiss for Lack of Jurisdiction. (Dkt. 188). On March 30, 2017 the Court held a hearing and
17 granted Cretney-Tsosie’s Motion to Dismiss and denied Lepera’s Motion to Dismiss. On April
18 29, 2017, Lepera filed a Notice of Appeal of the Court’s order dismissing her Complaint. (Dkt.
19 195). That appeal is pending before the United States Court of Appeals for the Ninth Circuit. *See*
20 *Cretney-Tsosie v. Lepera*, Case Number 17-15894 (9th Cir.).

21
22 On June 9, 2017, Genesis Healthcare, Inc. (“Genesis”), the successor corporation to
23 Skilled Healthcare and Creekside entered into a settlement agreement with the United States and
24 Cretney-Tsosie, which resolves the allegations in this action and provides for a dismissal of the
25 action. The parties filed a Joint Stipulation of Dismissal on June 20, 2017. Pursuant to the
26 Settlement Agreement, Cretney-Tsosie’s claims are dismissed with prejudice, except for the
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28 ¹ 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 following: (a) Cretney-Tsosie’s claims for reasonable expenses necessarily incurred and
2 reasonable attorneys’ fees and costs pursuant to 31 U.S.C. § 3730(d) and any claims or
3 defenses by Genesis related to any petition for attorneys’ fees or costs filed in connection with the
4 action referenced in Paragraph B.1 of the Settlement Agreement; and (b) Cretney-Tsosie’s claim
5 for the relator’s share (*i.e.* the percentage of the settlement amount any qualified relators are
6 entitled to receive under 31 U.S.C. § 3730(d)). Pursuant to Local Rule 54-14, this Court retains
7 jurisdiction over motions for reasonable attorneys’ fees “following the entry of a final judgment
8 or other order disposing of an action.”
9

10 In the interest of judicial efficiency, Cretney-Tsosie and Creekside now jointly move to
11 stay Relator Cretney-Tsosie’s petition for reasonable attorneys’ fees until the Court of Appeals
12 for the Ninth Circuit has resolved any appeal Lepera has filed or may file of this Court’s March
13 30, 2017 order. Lepera’s appeal delays final resolution of this action. Once the Ninth Circuit has
14 resolved Lepera’s appeal, this Court may hear Cretney-Tsosie’s claims for reasonable expenses
15 necessarily incurred and reasonable attorneys’ fees and costs pursuant to 31 U.S.C. § 3730(d)
16 and any claims or defenses by Genesis related to Cretney-Tsosie’s petition for attorneys’ fees or
17 costs filed in connection with the action referenced in Paragraph B.1 of the Settlement
18 Agreement. Following a final resolution of the appeal, Cretney-Tsosie and Creekside will notify
19 the Court of the appellate disposition and submit a proposed schedule for Relator to file a petition
20 for attorney’s fees under Local Rule 54-14.
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1 **WHEREFORE**, Plaintiff Relator Joanne Cretney-Tsosie and Defendants Creekside
2 Hospice, et al., move this Honorable Court to:

- 3 A. Grant their Joint Motion to Stay the Petition for Attorney's Fees and Costs; and
4 B. Enter an order staying this case in its entirety until the Ninth Circuit's resolution of
5 the Relator Veneta Lepera's appeal, Case Number 17-15894; and,
6
7 C. Award such other and further relief as the nature of this cause may require.

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9 Dated: June 20, 2017

Respectfully submitted,

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

/s/ Kathleen McDermott

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14 IT IS SO ORDERED.


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UNITED STATES DISTRICT JUDGE

17 DATED: June 22, 2017

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19 Charles H. McCrea (SBN #104)

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