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15 UNITED STATES DISTRICT COURT  
16 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

17 UNITED STATES OF AMERICA *ex*  
*rel.* KARIN BERNTSEN,

18 Plaintiff,

19 v.

20 PRIME HEALTHCARE SERVICES,  
21 INC.; *et al.*,

22 Defendants.

NO. CV 11-08214 PJW (MG)

NOTICE OF MOTION AND  
UNOPPOSED MOTION OF THE UNITED  
STATES TO PARTIALLY INTERVENE  
FOR GOOD CAUSE; MEMORANDUM  
OF POINTS AND AUTHORITIES AND  
DECLARATION OF LYNN HEALEY  
SCADUTO IN SUPPORT THEREOF

[FILED OR LODGED CONCURRENTLY:  
[PROPOSED] ORDER; [PROPOSED]  
NOTICE OF ELECTION OF THE  
UNITED STATES TO INTERVENE IN  
PART AND DECLINE TO INTERVENE  
IN PART AND [PROPOSED] ORDER  
THEREON]

Date: June 21, 2016  
Time: 1:30 p.m.  
Place: Courtroom 23

The Honorable Patrick J. Walsh

1 PLEASE TAKE NOTICE that on June 21, 2016, at 1:30 p.m. or as soon thereafter  
2 as the matter may be heard, the United States of America (“United States”) will and  
3 hereby does move this Court for an order granting the United States leave to partially  
4 intervene in this action for good cause pursuant to 31 U.S.C. § 3730(c)(3) and Rule 24(b)  
5 of the Federal Rules of Civil Procedure, and allowing the United States to file a  
6 complaint in intervention within 30 days after the date of the Court’s order. The United  
7 States’ Motion To Partially Intervene For Good Cause will be made before the  
8 Honorable Patrick J. Walsh, Chief United States Magistrate Judge, in Courtroom 23,  
9 located at the United States Courthouse, 312 N. Spring Street, Los Angeles, California  
10 90012.

11 This motion is made on the grounds that good cause exists to permit the United  
12 States to intervene pursuant to 31 U.S.C. § 3730(c)(3). This motion is made upon this  
13 Notice of Motion and Motion, the attached Memorandum of Points and Authorities, all  
14 pleadings, records, and other documents on file with the Court in this action, and upon  
15 such oral argument as may be presented at the hearing of this motion. This motion is  
16 made following the conference of counsel under Local Rule 7-3, which took place on  
17 May 16, 2016.

18 Dated: May 23, 2016

Respectfully submitted,

19 BENJAMIN C. MIZER  
Principal Deputy Assistant Attorney General  
20 EILEEN M. DECKER  
United States Attorney  
21 DOROTHY A. SCHOUTEN, AUSA  
Chief, Civil Division  
22 DAVID K. BARRETT, AUSA  
Chief, Civil Fraud Section  
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24 MICHAEL D. GRANSTON  
25 DANIEL R. ANDERSON  
MARIE V. BONKOWSKI  
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26 United States Department of Justice

27 /s/ Lynn Healey Scaduto  
LYNN HEALEY SCADUTO, AUSA  
28 Attorneys for the United States of America

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 The United States of America (“United States”) respectfully requests pursuant to  
3 31 U.S.C. § 3730(c)(3) and Rule 24(b) of the Federal Rules of Civil Procedure that the  
4 Court permit the United States to partially intervene for good cause in this *qui tam* action  
5 with respect to claims and allegations that the Defendants submitted or caused the  
6 submission of claims to Medicare for unnecessary inpatient stays as pled against all  
7 defendants other than defendants Luis Leon and Prime Healthcare Foundation. Relator  
8 Karin Berntsen (“Relator”) supports intervention, and Defendants Prime Healthcare  
9 Services, Prime Healthcare, fourteen hospitals operated by Prime in California, Dr. Prem  
10 Reddy, Prime’s founder and chairman of the board, and Luis Leon, the CEO of Alvarado  
11 Hospital (collectively, “Defendants”) have informed the United States that they will not  
12 oppose this motion.

13 **I. BACKGROUND**

14 On October 3, 2011, Relator filed this *qui tam* action alleging that Defendants had  
15 submitted claims to Medicare in violation of the False Claims Act, 31 U.S.C. §§ 3729 -  
16 3733 (“FCA”). Relator works at one of the fourteen defendant hospitals and alleges,  
17 among other things, that Defendants routinely submit, or cause to be submitted, inflated  
18 claims to Medicare for reimbursement for services rendered to beneficiaries who were  
19 admitted as inpatients when they should have been treated as outpatients on  
20 “observation” status at the hospital and/or who did not actually have the complications  
21 and comorbidities that increased the Medicare reimbursement amount.

22 On December 26, 2013, the Court unsealed the action after the United States filed  
23 a notice on December 23, 2013, informing the Court that it could not make an election  
24 decision before the Court’s deadline. Docket Nos. 43, 42. In that notice, the  
25 Government reserved the right to intervene for good cause at a later date pursuant to 31  
26 U.S.C. § 3730(c)(3) and advised the Court and Defendants that “the Government’s  
27 investigation w[ould] continue.” Docket No. 42. Defendants subsequently moved to  
28 dismiss Relator’s *qui tam* action. Docket No. 91. The Court denied their motion on

1 November 20, 2014. Docket No. 102.

2 Since then, the United States' investigation has continued and has yielded  
3 sufficient evidence to support partial intervention in Relator's *qui tam* action with  
4 respect to claims and allegations that the Defendants submitted or caused the submission  
5 of claims to Medicare for unnecessary inpatient stays as pled against all defendants other  
6 than defendants Luis Leon and Prime Healthcare Foundation. Declaration of Lynn  
7 Healey Scaduto ("Scaduto Decl."), ¶ 2. For example, we have learned since December  
8 23, 2013 that multiple witnesses who have worked at different Prime hospitals state that  
9 defendant Reddy would, among other things: (1) criticize Emergency Department  
10 ("ED") doctors and demand their termination if he decided they were passing up  
11 opportunities to cause the admission of Medicare beneficiaries; (2) request increased  
12 work schedules for ED doctors whose patients had a relatively high rate of admission;  
13 (3) request decreased or discontinued work schedules for ED doctors whose patients had  
14 a relatively low rate of admission; (4) tell ED doctors to find a way to admit all patients  
15 over 65 because they all have insurance; and (5) tell ED doctors that an insured patient  
16 who would be in the ED for more than two hours waiting for test results should be  
17 admitted but an uninsured patient could stay in the ED for 6 to 8 hours awaiting results  
18 and then be discharged. Scaduto Decl., ¶ 3.

19 Additionally, the Office of the Inspector General of the Department of Health and  
20 Human Services has issued more than 10 subpoenas in this investigation since December  
21 23, 2013, including two to Prime and several to ED physician groups that provide staff  
22 for Prime hospital EDs. Among the many things the United States obtained were  
23 "PEPPER" reports produced by Prime that had been prepared by a Medicare contractor  
24 and put Prime on notice of the same pattern of seemingly unnecessary inpatient  
25 admissions that Relator later alleged. Scaduto Decl., ¶ 4.

26 After December 23, 2013, the United States also obtained the results of a medical  
27 review of more than 600 admissions that had been underway for several months but not  
28 completed as of that date. Scaduto Decl., ¶ 5. The United States also served after that

1 date a subpoena for additional medical records and obtained a medical review of more  
2 than 100 medical records taken from the responsive production. *Id.* The United States  
3 also conducted additional analyses of Medicare claims data that revealed, among other  
4 things, that hospital billings for beneficiaries treated on “observation” status would  
5 plummet after Prime acquired a hospital. *Id.*

6 Settlement prospects have now been exhausted. Scaduto Decl., ¶ 7. Relator  
7 supports the United States’ partial intervention, and Defendants have informed the  
8 United States that they will not oppose this motion. *Id.* at ¶ 8.

## 9 **II. ARGUMENT**

10 The FCA provides that, even when the United States elects not to proceed with a  
11 *qui tam* action, a court may “permit the Government to intervene at a later date upon a  
12 showing of good cause.” 31 U.S.C. § 3730(c)(3). In enacting § 3730(c)(3), the U.S.  
13 Congress recognized that the “limited opportunity for Government involvement [during  
14 the investigation period] could in some cases work to the detriment of the Government’s  
15 interests.” S. Rep. No. 99-345, at 26-27 (reprinted at 1986 U.S.C.C.A.N. 5266, at 5291-  
16 92). Here, the United States submits that it has good cause to intervene on the  
17 allegations in the complaint that Defendants routinely submit, or cause to be submitted,  
18 inflated claims to Medicare for beneficiaries who were admitted to the hospital as  
19 inpatients when they should have been treated as outpatients.

20 In *United States ex rel. Stone v. Rockwell Int’l Corp.*, 950 F. Supp. 1046 (D. Colo.  
21 1996) and *United States ex rel. Hall v. Schwartzman*, 887 F. Supp. 60 (E.D.N.Y. 1995),  
22 the courts found good cause for the United States’ intervention after the United States  
23 initially declined to intervene. In both *Rockwell* and *Schwartzman*, the courts found that  
24 new evidence obtained by the United States after it initially declined to intervene  
25 justified intervention at a later date. *See* 950 F. Supp. at 1049; 887 F. Supp. at 62.

26 Here, as discussed in detail above, additional investigation has yielded additional  
27 evidence to support Relator’s allegations and undermine Defendants’ articulated  
28 defenses. Scaduto Decl., ¶¶ 2-5. In addition, like Relator here, the relators in both

1 *Rockwell* and *Schwartzman* supported intervention by the United States, a fact to which  
2 the *Rockwell* court assigned substantial weight. *See* 887 F.Supp. at 61-62; 950 F.Supp.  
3 at 1049. And both actions were at an early stage when the United States sought  
4 intervention, which supported the courts’ conclusions that intervention would not unduly  
5 prejudice the defendants or delay the proceedings. *Id.* Here, likewise, allowing  
6 intervention is unlikely to further delay the proceedings because formal discovery had  
7 not yet gotten underway when it was stayed pending the outcome of the parties’  
8 settlement efforts.

9 Another factor that weighed in favor of intervention in *Rockwell* and was “of  
10 paramount importance” to the court there was the public interest. The court in *Rockwell*  
11 found that “participation in [the action] by the government will add significantly to the  
12 completeness and fairness of any trial.” 950 F.Supp. at 1049. Allowing the United  
13 States to participate in the trial of this action is likewise in the public interest.

14 **III. CONCLUSION**

15 For the reasons set forth above, the United States respectfully requests that this  
16 Court issue an order granting the United States’ motion to partially intervene in this

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1 action, finding good cause for intervention and allowing the United States to file a  
2 complaint in intervention within 30 days after the date of the Court's order.

3 Dated: May 23, 2016

Respectfully submitted,

4 BENJAMIN C. MIZER  
Principal Deputy Assistant Attorney General  
5 EILEEN M. DECKER  
United States Attorney  
6 DOROTHY A. SCHOUTEN, AUSA  
Chief, Civil Division  
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11 United States Department of Justice

12  
13 /s/ Lynn Healey Scaduto  
14 LYNN HEALEY SCADUTO, AUSA  
Attorneys for the United States of America  
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**DECLARATION OF LYNN HEALEY SCADUTO**

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2 I, Lynn Healey Scaduto, declare:

3 1. I am an Assistant United States Attorney (“AUSA”) in the United States  
4 Attorney’s Office for the Central District of California. Since December 2015, I have  
5 been the attorney within the Office with primary responsibility for the instant case filed  
6 by *qui tam* plaintiff Karin Berntsen (“Relator”). I have personal knowledge of the facts  
7 stated herein, and if called as a witness, I could and would testify competently thereto.

8 2. The United States’ investigation has continued since it filed on December  
9 23, 2013, a Notice of the United States That It Is Not Intervening At This Time. The  
10 continued investigation has included, among other things, numerous witness interviews,  
11 analysis of documents and work with medical and coding consultants to evaluate the  
12 validity of numerous claims for reimbursement that Prime has submitted to Medicare.  
13 This investigation has yielded additional evidence to support Relator’s allegations and  
14 undermine Defendants’ articulated defenses with respect to claims and allegations that  
15 the Defendants submitted or caused the submission of claims to Medicare for  
16 unnecessary inpatient stays as pled against all defendants other than defendants Luis  
17 Leon and Prime Healthcare Foundation.

18 3. For example, we have learned since December 23, 2013 that multiple  
19 witnesses who have worked at different Prime hospitals state that defendant Reddy  
20 would, among other things: (1) criticize Emergency Department (“ED”) doctors and  
21 demand their termination if he decided they were passing up opportunities to cause the  
22 admission of Medicare beneficiaries; (2) request increased work schedules for ED  
23 doctors whose patients had a relatively high rate of admission; (3) request decreased or  
24 discontinued work schedules for ED doctors whose patients had a relatively low rate of  
25 admission; (4) tell ED doctors to find a way to admit all patients over 65 because they all  
26 have insurance; and (5) tell ED doctors that an insured patient who would be in the ED  
27 for more than two hours waiting for test results should be admitted but an uninsured  
28 patient could stay in the ED for 6 to 8 hours awaiting results and then be discharged.



1 4. Additionally, the Office of the Inspector General of the Department of  
 2 Health and Human Services has issued more than 10 subpoenas in this investigation  
 3 since December 23, 2013, including two to Prime and several to ED physician groups  
 4 that provide staff for Prime hospital EDs. Among the many things the United States  
 5 obtained were "PEPPER" reports produced by Prime that had been prepared by a  
 6 Medicare contractor and put Prime on notice of the same pattern of seemingly  
 7 unnecessary inpatient admissions that Relator later alleged.

8 5. After December 23, 2013, the United States obtained the results of a  
 9 primary medical review of more than 600 admissions that had been underway for several  
 10 months but not completed as of that date. The United States also served after that date a  
 11 subpoena for additional medical records and obtained a medical review of more than 100  
 12 medical records taken from the responsive production.

13 6. The United States also conducted additional statistical analyses of Medicare  
 14 claims data that revealed, among other things, that hospital billings for beneficiaries  
 15 treated on "observation" status would plummet after Prime acquired a hospital.

16 7. Relator, Defendants and the United States have engaged since December  
 17 23, 2013, in extensive efforts to settle this matter. On April 27, 2016, Defendants  
 18 informed the United States and Relator that Defendants had concluded that further  
 19 settlement discussions would not be worthwhile.

20 8. Relator has informed the United States that it supports partial intervention  
 21 by the United States. Mark Hardiman, counsel to Defendants, informed me on May 16,  
 22 2016, that Defendants will not oppose this motion.

23 I declare under penalty of perjury that the foregoing is true and correct.

24 Executed on May 23, 2016, at Los Angeles, California.

25  
 26 */s/ Lynn Healey Scaduto*  
 27 LYNN HEALEY SCADUTO  
 28