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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

SAINT ALPHONSUS MEDICAL CENTER - NAMPA, INC., TREASURE VALLEY HOSPITAL LIMITED PARTNERSHIP, SAINT ALPHONSUS HEALTH SYSTEM, INC., AND SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC.

Plaintiffs,

v.

ST. LUKE'S HEALTH SYSTEM, LTD. AND ST. LUKE'S REGIONAL MEDICAL CENTER, LTD.,

Defendants.

Case No. 1:12-cv-00560-BLW

ANSWER OF DEFENDANTS ST. LUKE'S HEALTH SYSTEM, LTD. AND ST. LUKE'S REGIONAL MEDICAL CENTER, LTD. TO PLAINTIFFS' AMENDED COMPLAINT FOR PRELIMINARY AND PERMANENT INJUNCTION AND DAMAGES

Defendants St. Luke's Health System, Ltd. and St. Luke's Regional Medical Center, Ltd. (collectively "St. Luke's") hereby answer the plaintiffs' Complaint. Any allegation not explicitly admitted herein is denied. Moreover, the headings contained within the Complaint are not substantive allegations to which an answer is required. To the extent those headings are substantive allegations to which an answer is required, St. Luke's denies the allegations. In answer to the Complaint, St. Luke's states as follows:

1. This case is being filed to preliminarily and permanently enjoin the latest, and most significant, in an unprecedented wave of acquisitions by St. Luke's Health System, Ltd. and St. Luke's Regional Medical Center, Ltd.(collectively "St. Luke's"). St. Luke's actions threaten to monopolize a broad series of markets in Idaho, further increase health care costs and reduce health care quality.

ANSWER: St. Luke's admits that plaintiffs have sought preliminary and permanent injunctive relief, but denies that plaintiffs are entitled to such relief. St. Luke's denies the remaining allegations of Paragraph 1.

2. St. Luke's has acquired more than 20 physician practices, 5 hospitals and 4 outpatient surgery centers in the last several years, gaining a dominant position in a series of health care markets. St. Luke's is now poised to acquire Saltzer Medical Group ("Saltzer"), the largest and oldest physician practice in Idaho. If St. Luke's is permitted to successfully acquire Saltzer, the public, Plaintiffs Saint Alphonsus Medical Center - Nampa, Inc. ("Saint Alphonsus Nampa"), Treasure Valley Hospital Limited Partnership ("Treasure Valley Hospital"), Saint Alphonsus Health System, Inc. and Saint Alphonsus Regional Medical Center, Inc., (together "Saint Alphonsus") (together "Plaintiffs"), and health care competition in Idaho and eastern Oregon, will be seriously and irreparably injured, in, among others, the following ways:

a. St. Luke's will gain a near monopoly share in the Nampa, Idaho market for adult primary care physician services market. It will continue its practice of foreclosing virtually all competition for the hospital admissions of the physician practices it acquires.

b. St. Luke's will possess an irreplaceable network of hospitals and physicians, that will allow it to raise prices beyond competitive levels.

c. Most urgently and irreparably, St. Luke's acquisition of Saltzer will deal a crippling financial blow to Saint Alphonsus Nampa hospital, which depends on the admissions from the Saltzer physicians. The acquisition will likely cause the loss of more than 140 jobs and the reduction or termination of key services. Since Saint Alphonsus Nampa is a critical "safety net" hospital for the poor, uninsured and underserved of Nampa, such actions will create devastating consequences for the Nampa community.

d. The acquisition will also irreparably harm Treasure Valley Hospital, which provides high quality, low cost care to the Boise area community. More than 40% of Treasure Valley Hospital's inpatient and outpatient cases are performed by Saltzer physicians. If St. Luke's acquires Saltzer, Treasure Valley Hospital would likely need to lay off 10% of its staff and cancel, or delay, planned capital improvements. These planned improvements include an increase in the number of operating rooms, a new CT scanner, and improvements in its electronic medical records system. These layoffs, delays and cancellations would have serious negative consequences on the quality of health care in the area.

e. The transaction will irreparably harm all the Plaintiffs, because it will provide St. Luke's with a greater ability to obtain exclusive or preferential treatment from payors and employers, disrupt Plaintiffs' provider networks offered to managed care and employers, and thereby interfere with the relationships between Plaintiffs on the one hand and payors and employers on the other. This anticompetitive interference will obstruct the ability of consumers and patients to benefit from competition for the highest quality product at the best price.

ANSWER: St. Luke's admits that it has acquired more than 20 physician practices and 4 outpatient surgery centers. St. Luke's also admits that it has acquired 4 hospitals to date, and that a fifth will be acquired as of April 1, 2013. St. Luke's admits that it has entered into a Professional Services Agreement with Saltzer Medical Group by which Saltzer physicians will be affiliated with St. Luke's for a period of five years, with a possible three year extension. St. Luke's further admits that it is acquiring various tangible assets of Saltzer subject to a possible sale-back and that it is employing non-physician employees of Saltzer. St. Luke's lacks sufficient information to admit or deny that Saltzer is the largest and oldest physician practice in Idaho and therefore denies that allegation. St. Luke's denies the remaining allegations of Paragraph 2.

3. St. Luke's actions, including the pending Saltzer acquisition, are the subject of a pending antitrust investigation by the Federal Trade Commission and Idaho Attorney General. The Idaho Attorney General has repeatedly requested that St. Luke's hold its transaction in abeyance so that the investigation can continue. In a letter dated November 8, 2012, Deputy Attorney General of Idaho stated to St. Luke's counsel that St. Luke's actions are "counterproductive" and "would appear designed to invite litigation":

> "As you know, the Attorney General earlier wrote St. Luke's and asked that it hold off on closing its purchase of Saltzer pending his review of this acquisition. He later sent a similar letter to Saltzer. In August, our office served your client and Saltzer with CIDs to obtain relevant information regarding the transaction. The present incomplete status of the production greatly hampers our ability to review this transaction and determine whether it complies with the Idaho Competition Act. To proceed to close under such circumstances is not

constructive and counter-productive. Indeed, such a strategy would appear designed to invite litigation."

See Ex. A.

On November 6, 2012, an attorney for the Federal Trade Commission who has been investigating St. Luke's activities stated that the FTC is "focusing on the Saltzer investigation," because "there has been some indication… in the press, that the parties intend to close this transaction soon; and therefore the FTC is accelerating its investigation of that particular transaction." Nevertheless, St. Luke's is preparing to defy antitrust authorities and to imminently complete the transaction before the FTC or Attorney General act. Plaintiffs are forced to proceed in order to prevent immediate and irreparable injury.

ANSWER: St. Luke's admits that its affiliation with Saltzer is the subject of a pending investigation by the Federal Trade Commission and by the Idaho Attorney General. St. Luke's further admits that it received letters from the Attorney General's office and the FTC, dated November 8 and November 6 respectively, which contain the language quoted in this paragraph. Luke's further admits that it has closed the Saltzer transaction. St. Luke's denies the remaining allegations of Paragraph 3.

4. This injury can only be avoided by the issuance of an injunction temporarily prohibiting this transaction pending a trial on the merits.

ANSWER: St. Luke's denies the allegations of Paragraph 4.

THE PARTIES

5. Plaintiff Saint Alphonsus Medical Center – Nampa, Inc. ("Saint Alphonsus Nampa") is a not-for-profit corporation organized under and by virtue of the laws of Idaho. Saint Alphonsus Nampa is headquartered in Nampa, Idaho. Saint Alphonsus Nampa is part of the Saint Alphonsus Health System.

ANSWER: St. Luke's admits the allegations of Paragraph 5. Further answering, St. Luke's states that Saint Alphonsus Health System is owned by Trinity Health, which St. Luke's believes to be the second largest Catholic health system in the United States.

6. Saint Alphonsus Nampa has operated in Nampa (under this and other names) since 1917. It is a critical "safety net" hospital for the Nampa community. Twenty-five percent of its emergency room patients are uninsured. Half of Saint Alphonsus Nampa births are delivered by physicians at the Terry Reilly Clinic, which is devoted to serving the poor and

uninsured. The hospital's percentage of bad debt and charity care is twice the national average and twice as high as any other hospital in the Treasure Valley.

ANSWER: St. Luke's admits that the hospital currently known as Saint Alphonsus Nampa has operated in Nampa since 1917. St. Luke's lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of Paragraph 6 and therefore denies them.

7. Saint Alphonsus Nampa (formerly Mercy Medical Center) was acquired by Saint Alphonsus Health System in 2010. Saint Alphonsus has invested many millions of dollars to improve the Nampa hospital's services and facilities. This effort has been very successful, and Saint Alphonsus Nampa has continually improved its quality and efficiency. For example, Saint Alphonsus Nampa has won many recent awards for its quality. It has been ranked number one in Idaho for coronary interventional procedures, gastrointestinal services and medical treatment. It has also been ranked among the top five hospitals in Idaho for critical care and joint replacement. The hospital has received five-star ratings for coronary interventional procedures, treatment of heart attack, total hip replacement, treatment of gastrointestinal bleeding, sepsis and pulmonary embolisms. In 2012, it won a HealthGrades patient safety excellence award. Saint Alphonsus Nampa has also improved its service to patients and physicians by substantially reducing waiting time in the emergency room, by reducing operating room turnaround time, and by improving information systems.

ANSWER: St. Luke's admits that the hospital currently known as Saint Alphonsus Nampa was acquired by Saint Alphonsus Health System in 2010. St. Luke's lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of Paragraph 7 and therefore denies them.

8. Saint Alphonsus Nampa currently has plans to expand the hospital at a new location on the I-84 freeway, with a new emergency department, heart care center and obstetrics unit. It is also planning significant renovation and facility enhancement to its main campus.

ANSWER: St. Luke's admits that Saint Alphonsus Nampa has announced its plans to expand the hospital at a new location, but lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of Paragraph 8 and therefore denies them.

9. Plaintiff Treasure Valley Hospital Limited Partnership, doing business as Treasure Valley Hospital, ("TVH") is a 9-bed physician-owned, short–term care, non-emergency hospital in Boise, Idaho. TVH offers both inpatient and outpatient services. It also offers a full-

service laboratory and imaging services, including high field MRI, Multi-Slice CT scanning, Ultrasound, and X-Ray services.

ANSWER: St. Luke's admits that TVH is a 9-bed physician-owned, short-term care hospital in Boise that does not have an emergency department, and that TVH offers both inpatient and outpatient services. St. Luke's lacks knowledge or information sufficient to form a belief regarding the extent to which TVH's laboratory and imaging services are properly characterized as "full-service," and therefore denies the remaining allegations of Paragraph 9.

10. TVH provides high quality, low cost health care. By nationally recognized measures of quality gathered by the federal government at www.hospitalcompare.hhs.gov, TVH has the best quality measures of all of the hospitals in the Treasure Valley. TVH is first among the local hospitals in each of the 10 categories listed by the government on that site. TVH's percentage score in each of these 10 categories is 15 or more percentage points higher than that of the next closest hospital.

ANSWER: St. Luke's lacks knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 10 and therefore denies them.

11. Plaintiff Saint Alphonsus Regional Medical Center, Inc. ("Saint Alphonsus Boise") is a not-for-profit corporation, organized under and by virtue of the laws of Idaho, and headquartered in Boise, Idaho. It operates a licensed medical-surgical/acute care 381-bed facility that serves as the center for advanced medicine in its community.

ANSWER: St. Luke's admits the first sentence of Paragraph 11 and admits that Saint Alphonsus Boise operates a licensed medical-surgical/acute care, 381-bed facility. St. Luke's denies the remaining allegations of Paragraph 11.

12. Saint Alphonsus Boise is Idaho's only nationally-ranked Trauma, Chest Pain and Primary Stroke Center, and is a 4-time HealthGrades Distinguished Hospital for Clinical Excellence recipient, ranking it among the top 5% of hospitals nationwide.

ANSWER: St. Luke's lacks knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 12 and therefore denies them.

13. Plaintiff Saint Alphonsus Health System, Inc. ("Saint Alphonsus") is a not-for profit corporation organized under and by virtue of the laws of Idaho. Saint Alphonsus is headquartered in Boise, Idaho. Saint Alphonsus owns and operates medical centers serving the full range of the health and wellness needs of the people in southwestern Idaho, eastern Oregon

and northern Nevada. Saint Alphonsus owns four hospitals located in Idaho and Oregon: Saint Alphonsus Regional Medical Center – Boise; Saint Alphonsus Medical Center – Nampa; Saint Alphonsus Medical Center – Ontario; and Saint Alphonsus Medical Center – Baker City.

ANSWER: St. Luke's admits the first and the last sentences of Paragraph 13. St. Luke's denies the second sentence because Saint Alphonsus is part of the Trinity Health Corporation, which is an Indiana corporation headquartered in Michigan. St. Luke's denies the remaining allegations of Paragraph 13.

14. Defendant St. Luke's Health System, Ltd. ("SLHS") is a not-for-profit health system organized under and by virtue of the laws of Idaho. SLHS, which is headquartered in Boise, Idaho. SLHS is the parent of St. Luke's Regional Medical Center, Ltd., and the other entities in the Saint Luke's system. SLHS directs and coordinates the operations of a children's hospital, six other hospitals: St. Luke's Boise, a 399-bed hospital in Boise; St. Luke's Meridian, a 167-bed hospital in Meridian; St. Luke's Magic Valley, a 228-bed hospital in Twin Falls; St. Luke's Wood River, a 25-bed hospital in Ketchum; St. Luke's Jerome, a 25 bed hospital in Jerome; St. Luke's McCall, a 15 bed hospital in McCall, a cancer referral center and more than 100 clinics throughout central and southwest Idaho and eastern Oregon. SLHS also has a "joint partnership" with North Canyon Medical Center in Gooding, Idaho. In addition, pursuant to management contracts, SLHS manages the operations of Elmore Regional Medical Center located in Mountain Home, Idaho; Challis Clinic located in Challis, Idaho; Salmon River Clinic located in Stanley, Idaho; and the cardiology and vascular services of West Valley Medical Center located in Caldwell, Idaho. SLHS is the sole corporate member of St. Luke's Regional Medical Center, Ltd., and St. Luke's Magic Valley Regional Medical Center, Ltd.

ANSWER: St. Luke's notes that the second sentence of this paragraph is not a complete sentence and therefore denies the allegations of that sentence. St. Luke's further notes that it operates Mountain States Tumor Institute (which plaintiffs refer to as "a cancer referral center"). Except as noted above, St. Luke's admits the remaining allegations of Paragraph 14.

15. Defendant St. Luke's Regional Medical Center, Ltd., ("SLRMC") is an Idaho not-for-profit corporation, which owns and operates St. Luke's Boise, St. Luke's Meridian and a number of outpatient facilities, including urgent care, ambulatory surgery centers, and a variety of physician clinics. SLRMC is also the sole corporate member of Mountain States Tumor Institute, Inc., which owns and operates a multidisciplinary, comprehensive cancer referral center. SLRMC is the St. Luke's entity that purchased the assets of Saltzer and employs the non-physician former Saltzer employees.

ANSWER: St. Luke's admits the allegations of Paragraph 15 except that St. Luke's did not purchase all the assets of Saltzer and that the assets purchased are subject to a buy back in the event of certain contingencies.

16. The Boise metropolitan area or "Treasure Valley" consists of two counties, Ada (containing the city of Boise, and the towns of Meridian, Kuna, Star, and Eagle) and Canyon (containing the towns of Nampa, Middleton, and Caldwell). There are three hospitals in Ada County, SARMC and TVH in Boise, and St. Luke's with campuses in Boise and Meridian. There are also two hospitals in Canyon County, Saint Alphonsus Nampa and West Valley Medical Center ("West Valley") in Caldwell. St. Luke's share of hospital inpatient hospital services in Ada and Canyon counties combined is approximately 58%. Saint Alphonsus and TVH have an approximate 34.7% share and 0.5% share, respectively. West Valley's share is approximately 6.8%.

ANSWER St. Luke's admits that there are three hospitals in Ada County and two hospitals in Canyon County. St. Luke's denies the remaining allegations of Paragraph 16.

SALTZER MEDICAL GROUP

17. Saltzer is a physician-owned multispecialty group with its principal place of business located in Nampa, Idaho. Saltzer is the largest, physician-owned, multispecialty group in Idaho with physicians in at least 12 specialties. Saltzer employs all of the internists in Nampa, all but one of the pediatricians, and all of the rheumatologists. Most of these physicians are primarily based at Saltzer's main facility in Nampa, Idaho. Saltzer provides outstanding medical care, and has a leading reputation in the Nampa community. Saltzer prides itself on the loyalty of its patients, many of whom are in the third generation of families treated by Saltzer. Past studies commissioned by Saltzer indicate that it is at the 90^{th} percentile or higher among physicians in terms of patient satisfaction.

ANSWER: St. Luke's denies the allegations of the third and last sentences of Paragraph 17. St. Luke's lacks information sufficient to admit or deny the allegation it is "the largest, physician-owned, multispecialty group in Idaho" and therefore denies that allegation. St. Luke's admits the remaining allegations of Paragraph 17.

18. Saltzer faces very little competition in the Nampa area, where it is based, and where most of its physicians practice. More than three-quarters of Saltzer's patients come from the city of Nampa.

ANSWER: St. Luke's denies the allegations of Paragraph 18.

19. Saltzer's dominance in Nampa is even greater than its number of physicians would suggest. Its physicians tend to see significantly more patients than the typical physician per doctor in the area.

ANSWER: St. Luke's denies the allegations of Paragraph 19.

20. Patients in the Nampa area have always demanded Saltzer in their payor network. For example, when Saint Alphonsus acquired what was then Mercy Hospital in Nampa, its employees became self-insured under the Saint Alphonsus network. That network did not include Saltzer because Saint Alphonsus did not previously have employees in the Nampa area. The employees immediately demanded that Saltzer physicians be added to their network.

ANSWER: St. Luke's lacks knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 20 and therefore denies them.

21. Similarly, when the St. Luke's network sought to provide coverage for JR Simplot, which has a significant number of employees in the Nampa area, Simplot demanded that the network include Saltzer.

ANSWER: St. Luke's admits that St. Luke's network sought to provide coverage for JR Simplot and admits that Simplot has a significant number of employees in the Nampa area. St. Luke's denies the remaining allegations of Paragraph 21.

22. The Saltzer primary care physicians refer almost all of their specialty cases to Saltzer specialists, where Saltzer has a specialist in the relevant field. The Saltzer specialists receive the vast majority of their cases from Saltzer primary care physicians.

ANSWER: St. Luke's lacks knowledge or information sufficient to form a belief about the truth of the allegations of the first sentence of Paragraph 22 and therefore denies them. St. Luke's denies the remaining allegations of Paragraph 22.

23. Saltzer's main office is located across the street from the Saint Alphonsus Nampa campus. Saint Alphonsus Nampa has always depended very heavily on admissions from Saltzer physicians and from the Saltzer patients not technically admitted by Saltzer physicians, but referred to hospitalists at Saint Alphonsus Nampa. Saltzer patients are critical to the financial viability of Saint Alphonsus Nampa, both because of their volume and the fact that they are more heavily weighted to (more lucrative) commercially insured patients than the hospital's overall patient base. Saint Alphonsus Nampa is able to afford to treat the poor, uninsured and Medicaid population (on whom it loses money) because of more profitable commercially insured admissions through physicians such as Saltzer.

ANSWER: St. Luke's admits the first sentence of Paragraph 23. St. Luke's lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations and therefore denies them.

24. TVH also relies heavily on Saltzer for its cases. More than 40% of its inpatient and outpatient cases have been performed historically by Saltzer physicians.

ANSWER: St. Luke's lacks knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 24 and therefore denies them.

JURISDICTION AND VENUE

25. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1337(a), Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26.

ANSWER: The allegations of Paragraph 25 purport to state a legal conclusion to which an answer is not required. To the extent an answer is required, St. Luke's admits that plaintiffs bring this action pursuant to 28 U.S.C. §§ 1331 and 1337(a) and Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26.

26. St. Luke's transacts business in the District of Idaho and is subject to personal jurisdiction therein. The actions complained of herein took place in this district. Venue is proper in this district pursuant to 15 U.S.C. §§ 15, 22 and 26, and 28 U.S.C. § 1391.

ANSWER: The allegations of Paragraph 26 purport to state a legal conclusion to which an answer is not required. To the extent an answer is required, St. Luke's admits the allegations of Paragraph 26.

TRADE AND COMMERCE

27. St. Luke's is engaged in interstate commerce and in activities substantially affecting interstate commerce. Hundreds of millions of dollars (and close to a majority) of St. Luke's, Saint Alphonsus' and TVH's revenues come from sources located outside of Idaho, including payments from the federal government through such programs as Medicare and payments from out of state commercial payors such as Coventry, Aetna and United Healthcare. This includes payments for both hospital and physicians' services. St. Luke's and Saint Alphonsus borrow at least tens of millions of dollars from lenders in interstate commerce, through their bond offerings. Moreover, St. Luke's sells medical services in interstate commerce, and its conduct has an effect on the citizens of several states. St. Luke's activities at

issue include activities in Oregon, where it owns and operates medical facilities. Both St. Luke's and Saint Alphonsus treat a substantial number of patients from other states, including in particular eastern Oregon. The parties hereto expend millions of dollars on the purchase of supplies in interstate commerce.

ANSWER: St. Luke's admits the allegations of Paragraph 27.

28. As a result of the fact that much of St. Luke's, Saint Alphonsus' and TVH's revenues come from sources located outside of Idaho, including payments from out of state commercial payors, the increases in the market power of St. Luke's, and weakening of Saint Alphonsus and TVH, described herein, will substantially affect the prices and rates negotiated with the commercial payors and, therefore, substantially affect the parties' revenues in interstate commerce. Such actions will also substantially affect the flow of patients across state lines and purchase of supplies in interstate commerce, substantially increasing St. Luke's volume of patients and interstate purchases and decreasing the volumes of the plaintiffs.

ANSWER: St. Luke's admits that it receives payments from out of state commercial payers, but denies the remaining allegations of Paragraph 28.

FACTUAL ALLEGATIONS

St. Luke's Acquisition of Physician Practices in the Boise Area

29. Over the course of the last four years, St. Luke's has engaged in a series of acquisitions in the Boise, Idaho area that are unprecedented in their magnitude, scope and rapidity. St. Luke's has acquired 22 physician practices, adding more than 200 employed physicians. These acquisitions have occurred across 11 different specialties and include, most significantly, acquisitions of 11 separate groups of primary care physicians.

ANSWER: St. Luke's admits that it has acquired at least 22 physician practices in the Boise, Idaho area and further admits the allegations of the last sentence of Paragraph 29 (other than the words "most significantly"). St. Luke's denies the remaining allegations of Paragraph 29.

30. The physician practices that St. Luke's has acquired include some of the most prominent and popular physician groups in the Treasure Valley area, including Capital City Family Medicine, Idaho Family Physicians, Mountain View Medical, Boise Surgical, Intermountain Orthopedics and Boise Orthopedics. The first three groups were among the leading primary care groups in the Boise area. Boise Surgical and Boise Orthopedics were, respectively, the most prominent general surgery group and most prominent orthopedic surgery group in the area before they were acquired.

ANSWER: St. Luke's admits that it has affiliated with Capital City Family Medicine, Idaho Family Physicians, Mountain View Medical Center, Boise Surgical Group, Intermountain Orthopedics, and Boise Orthopedics. St. Luke's denies the remaining allegations of Paragraph 30.

31. St. Luke's acquisitions over the last two years have given it a dominant position in primary care services and several physician specialty markets, including general surgery, cardiology, pulmonology and orthopedic surgery in the Boise area.

ANSWER: St. Luke's denies the allegations of Paragraph 31.

<u>St. Luke's Acquisition of Surgery Facilities</u>

32. St. Luke's has also acquired a number of independent competitive facilities that provided (or would have provided) surgery and/or cardiac catheterizations. In some cases, St. Luke's paid substantial sums simply to eliminate the competition provided by these facilities, without even operating them. This has further reduced competition and increased St. Luke's dominance.

ANSWER: St. Luke's admits that it has acquired a number of facilities that provided surgery and/or cardiac catheterizations. St. Luke's denies the remaining allegations of Paragraph 32.

33. When St. Luke's acquired the Intermountain Orthopedic group, it also acquired plans, and the land that was purchased, to build an independent neurosurgical-orthopedic hospital. The planned hospital was abandoned by St. Luke's. St. Luke's also acquired another surgery center (previously owned by Intermountain) when it acquired Intermountain.

ANSWER: St. Luke's admits that it acquired a surgery center partially owned by physicians associated with Intermountain Orthopaedics but denies the remaining allegations of Paragraph 33.

34. St. Luke's also acquired Orthopedic Surgery Center on River Street. After the acquisition, many prices at the facility doubled or tripled.

ANSWER: St. Luke's admits that it acquired Orthopedic Surgery Center of Idaho. St. Luke's denies the remaining allegations of Paragraph 34.

35. When St. Luke's acquired Idaho Cardiology Associates, the major cardiology group in Boise in late 2007, it also acquired an outpatient catheterization lab (performing diagnostic heart catheterizations) that the doctors operated. Prior to the acquisition, the cardiologists were located on the Saint Alphonsus Boise campus. After the acquisition, the group (except for a few physicians who left the group) moved to the St. Luke's campus. St. Luke's, however, shut down the cath lab, and never operated it.

ANSWER: St. Luke's admits that it acquired Idaho Cardiology Associates and that included in the acquisition was an outpatient catheterization lab that was part of Idaho Cardiology Associates' practice. St. Luke's further admits that, prior to its affiliation with Idaho Cardiology Associates, the physicians of that group were located on the Saint Alphonsus Boise campus, and that, some time after the affiliation, the group (except for the physicians who left the group) relocated to the St. Luke's campus. Further answering, St. Luke's states that Saint Alphonsus pushed St. Luke's to leave its campus. St. Luke's denies the remaining allegations of Paragraph 35.

36. These acquisitions have resulted in the possession by St. Luke's of a dominant share of surgery rooms in the Treasure Valley.

ANSWER: St. Luke's denies the allegations of Paragraph 36.

St. Luke's has Exploited its Monopoly Power in the Magic Valley

37. Since the late 1990's St. Luke's has been systematically acquiring virtually all of the hospitals and physician practices in the Magic Valley. For example:

- In the late 1990s, St. Luke's acquired the hospitals in Ketchum, Idaho and in 2000, St. Luke's replaced them with St. Luke's Wood River. St. Luke's now employs virtually all the primary care physicians in Hailey and Ketchum.

- In 2006, St. Luke's acquired the Magic Valley Regional Medical Center located in Twin Falls, Idaho. St. Luke's has acquired and now employs the vast majority of the physician practices in the Twin Falls area.

- In 2008, St. Luke's entered into a management agreement with Gooding County Memorial Hospital ("Gooding Memorial") in Gooding, Idaho. In 2010, the 40-year old Gooding Memorial was replaced by the North Canyon Medical Center ("North Canyon"), which is owned by a "joint partnership" including St. Luke's.

- In 2011, St. Luke's acquired St. Benedict's in Jerome, Idaho.
- St. Luke's managed Elmore Medical Center ("EMC") located in Mountain Home, Idaho for ten years, and in May 2012 St. Luke's acquired EMC.

ANSWER: St. Luke's denies that it has been "systematically acquiring virtually all of the hospitals and physician practices in the Magic Valley." St. Luke's admits that it opened St. Luke's Wood River, that it acquired Magic Valley Regional Medical Center, that it entered into a "joint partnership" with Gooding Memorial to open North Canyon Medical Center, and that St. Luke's Magic Valley Regional Medical Center, Ltd. acquired St. Benedicts in Jerome. St. Luke's denies that it acquired Gooding Memorial and Elmore Medical Center. St. Luke's denies all remaining allegations of Paragraph 37.

38. As a result of these acquisitions, St. Luke's currently controls (through employment or professional services agreements) upwards of 70% of all physicians and over 80% of the primary care physicians in the Twin Falls-Jerome area. St. Luke's also controls 100% of the specialists in pediatrics, urology and neurology in that area. In Wood River, St. Luke's controls 80% of the primary care physicians, 67% of OB/GYNs and 47% of all physicians.

ANSWER: St. Luke's admits that St. Luke's Magic Valley Regional Medical Center, Ltd. has employment or professional services agreements with upwards of 70% of all physicians and over 80% of the primary care physicians in the Twin Falls-Jerome area. St. Luke's further admits that St. Luke's Magic Valley Regional Medical Center, Ltd. has employment or professional services agreements with 100% of the specialists in pediatrics, urology, and neurology in that area. St. Luke's lacks sufficient information to know the percentage of the primary care physicians, OB/GYNs, and all physicians with whom it or an affiliate has employment or professional services agreements in Wood River and therefore denies the allegations of the last sentence of Paragraph 38.

39. A September 2011 editorial in the Twin Falls Times-News characterized St. Luke's as a "near monopoly" and added that "St. Luke's is the only health care option for most Magic Valley residents. While a small number of physicians – and even fewer hospitals – remain unaffiliated, most have signed on with St. Luke's."

ANSWER: St. Luke's admits that an editorial in the Twin Falls Times-News made the above-quoted characterization, but St. Luke's denies that the statements and characterizations of Paragraph 39 are true.

40. As a result of St. Luke's consolidation of power in the Magic Valley, it has been able to charge prices far above competitive levels. The cost for services doubled the first year St. Luke's Wood River Medical Center opened and the price increases in the Magic Valley have only continued to increase from there. For example, the price for colonoscopies at St. Luke's Magic Valley Regional Medical Center has quadrupled over the last few years. St. Luke's charges approximately two to three times more than local independent surgical centers for endoscopies. St. Luke's charges approximately three times as much for laboratory work than the independent labs in the Magic Valley. The prices for CT Scans at St. Luke's are approximately 60% higher and X-Rays are twice as expensive as they are elsewhere in the Magic Valley. As a result of these supracompetitive prices, physicians in Twin Falls often send patients to medical centers in Burley (40 miles away) or Rupert (48 miles away) for CT Scans and X-Rays because they can save their patients anywhere from $400-$500. St. Luke's has also successfully succeeded in demanding higher reimbursement rates from one or more health plans.

ANSWER: St. Luke's denies the allegations of the first sentence of this paragraph. Further answering, St. Luke's denies that any price increase referred to in this paragraph was the result of "consolidation of power in the Magic Valley". St Luke's lacks knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 40 relating to a comparison of its charges to charges of other providers and therefore denies these allegations. St. Luke's denies the remaining allegations of this paragraph.

41. St. Luke's gradually increasing control over the Magic Valley has also resulted over time in an almost 50% decline in admissions from the Magic Valley to Saint Alphonsus.

ANSWER: St. Luke's denies that St. Luke's has gradually increased control over the Magic Valley. St. Luke's lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of Paragraph 41 and therefore denies them.

The Proposed Acquisition of the Saltzer Medical Group

42. St. Luke's and Saltzer began discussing a possible acquisition in 2009. At that time, Ed Castledine of St. Luke's told Saltzer that if Saltzer did not join with St. Luke's, St. Luke's would bring physicians into the Nampa area to compete with Saltzer.

ANSWER: St. Luke's admits that its discussions with Saltzer about a possible affiliation began in 2009. St. Luke's denies the remaining allegations of Paragraph 42.

43. St. Luke's personnel described their motivations in undertaking the Saltzer transaction as arising from two factors. First, St. Luke's wanted to secure Saltzer's primary care referrals. Second, St. Luke's wanted additional market share. Both these points were made by St. Luke's personnel, including, in particular, John Kee, St. Luke's Vice President of Physician Services.

ANSWER: St. Luke's denies the allegations of Paragraph 43.

44. St. Luke's personnel also described their overall goals with respect to the market. St. Luke's wanted control over the patient from beginning to end. St. Luke's desired a system in which patients saw St. Luke's primary care physicians, had their surgeries performed by St. Luke's specialists at St. Luke's facilities and received all of their ancillary services at St. Luke's facilities.

ANSWER: St. Luke's admits that it desires an integrated delivery system, but otherwise denies the allegations of Paragraph 44.

45. John Kee also told Saltzer personnel that Saltzer had more negotiating power with managed care than it realized. He said that St. Luke's received better rates than Saltzer in the Twin Falls area because of the strength of its network.

ANSWER: St. Luke's denies the allegations of Paragraph 45.

46. After St. Luke's made its bid to acquire Saltzer, Saltzer requested that Saint Alphonsus offer a competing bid. While Saint Alphonsus complied with Saltzer's request and placed a bid that was ultimately unsuccessful, it was always Saint Alphonsus' desire that Saltzer remain as an independent entity within Nampa.

ANSWER: St. Luke's admits that Saltzer requested an offer from Saint Alphonsus after St. Luke's made its offer to affiliate with Saltzer and that Saint Alphonsus's offer was rejected by Saltzer. St. Luke's denies the remaining allegations of Paragraph 46.

47. In early 2012, St. Luke's and Saltzer agreed in principle to an acquisition. Pursuant to the currently contemplated transaction, St. Luke's will acquire Saltzer's intangible

assets, personal property and equipment, take over the lease on Saltzer's real estate, and employ all of Saltzer's non-physician employees. Saltzer's physicians will then enter into professional services agreements with St. Luke's, and St. Luke's will conduct all managed care contracting and billing for the Saltzer physicians and their employees and services.

ANSWER: St. Luke's admits that in early 2012, St. Luke's and Saltzer agreed in principle to an affiliation. St. Luke's admits the second sentence of this paragraph and the first clause of the last sentence. St. Luke's admits that it will conduct billing for Saltzer physicians for all services other than gastroenterology. St. Luke's admits that it will move Saltzer onto its contracts with health insurance carriers or self-insured employers where both St. Luke's and Saltzer have contracts with the same entity. St. Luke's denies the remaining allegations of Paragraph 47.

FTC and Attorney General Actions

48. In late 2011, both the Federal Trade Commission and the Idaho Attorney General began investigating St. Luke's actions under the federal antitrust laws and Idaho's Competition Act, respectively. These investigations are ongoing.

ANSWER: St. Luke's admits that the FTC and the Idaho Attorney General's office are currently investigating certain conduct of St. Luke's pursuant to the FTC Act and the Idaho Competition Act, respectively. St. Luke's admits that it learned of the FTC investigation into St. Luke's acquisition of St. Benedicts in Jerome in late 2011, but denies that it learned of any investigation by the Idaho Attorney General prior to 2012.

49. On February 24, 2012, shortly after being made aware of St. Luke's intention to acquire Saltzer, the Idaho Attorney General, Lawrence Wasden, wrote a letter to Christine Neuhoff, Vice President and General Counsel, informing St. Luke's that "if consummated," its acquisition of Saltzer "directly affects our current antitrust review." The letter also stated that "[h]aving one more large acquisition in the mix complicates matters and would result in additional cost and expense for all parties involved." Attorney General Wasden further noted that it was his "hope … that St. Luke's will delay closing on its acquisition of the Saltzer Medical Group, and any other medical practice group it is considering acquiring, until our investigation is complete." See Ex. B.

ANSWER: St. Luke's admits the allegation that the Idaho Attorney General, Lawrence Wasden, wrote a letter to St. Luke's Vice President and General Counsel, Christine Neuhoff, dated February 24, 2012, containing the language quoted in Paragraph 49. St. Luke's denies that the consummation of the Saltzer transaction will have the purported effects.

50. In an August 16, 2012, statement to the press, St. Luke's spokesperson Ken Dey confirmed St. Luke's intent to move forward with the acquisition of Saltzer. Dey added that St. Luke's acquisition of Saltzer is "pretty much a 'when' and not an 'if.'" St. Luke's stated that it would provide the antitrust authorities with 30 days' notice of any closing on the Saltzer transaction.

ANSWER: St. Luke's admits that Ken Dey on August 16, 2012 confirmed St. Luke's intent to go forward with the Saltzer transaction and that St. Luke's would provide the antitrust authorities with 30 days written notice prior to the closing of the transaction. St. Luke's denies the remaining allegations of Paragraph 50.

51. In response to St. Luke's statements in August that it intended to move forward with its acquisition of Saltzer, the Idaho Attorney General wrote a letter to Saltzer dated August 29, 2012, asking it to not merge with St. Luke's while the hospital system was under investigation for possible antitrust violations. See Ex. C. The Attorney General informed Saltzer that:

> "The acquisition [of Saltzer], if consummated, directly affects our current antitrust review. While there are various remedies available to address acquisitions that substantially lessen competition, including divestiture, I would hope that upon conclusion of our investigation.. we could work to address [concerns] amicably and informally without the need for litigation and court participation. … My hope is that St. Luke's and the Saltzer Medical Group will delay closing on this acquisition until our investigation is complete."

ANSWER: St. Luke's admits that the Idaho Attorney General wrote a letter to Saltzer dated August 29, 2012, requesting that Saltzer not complete its transaction with St. Luke's while St. Luke's was under investigation. St. Luke's admits that the letter contained the language quoted in Paragraph 51. St. Luke's denies the truth of any allegation contained within that language and denies the remaining allegations of Paragraph 51.

52. On or before October 23, 2012, in a "President's Update," St. Luke's president, David Pate, announced that "SLHS has provided notice to the FTC and state AG of our intent to proceed to closing with the Saltzer Medical Group." Ex. D. Thus, given the earlier announcement that any notice would provide 30 days, the transaction can be expected to close imminently.

ANSWER: St. Luke's admits that David Pate announced that St. Luke's "has provided notice to the FTC and state AG of our intent to proceed to closing with Saltzer Medical Group." St. Luke's admits that the Saltzer transaction has closed. St. Luke's denies the remaining allegations of Paragraph 52.

53. As described above, on November 8, 2012, Idaho's Deputy Attorney General, Brett T. DeLange wrote a letter to St. Luke's counsel reiterating the Attorney General's stance that St. Luke's not close this transaction, informing St. Luke's that the Attorney General's investigation was not complete and stating that proceeding to close the transaction was "counterproductive" and "appear[ed] designed to invite litigation." See Ex. A.

ANSWER: St. Luke's admits that Idaho's Deputy Attorney General Brett DeLange wrote a letter on November 8, 2012 to St. Luke's counsel reiterating the stance of the Attorney General regarding the Saltzer transaction, stating that the Attorney General's review of the transaction was incomplete, and stating that "proceeding to close the transaction was 'counterproductive' and 'appear[ed] designed to invite litigation.'" St. Luke's denies that proceeding to close the Saltzer transaction is "counterproductive" or "invite[s] litigation."

St. Luke's Activities In Nampa

54. St. Luke's acquisition of Saltzer would be a further step in its attempt to gain dominance in the Nampa area. St. Luke's consistent pattern in its physician practice acquisitions has been to acquire the physicians, and then cause them to shift all or virtually all their admissions and other business away from competing facilities, thereby foreclosing competition and securing referrals and admissions for St. Luke's.

ANSWER: St. Luke's denies the allegations of Paragraph 54.

55. For example, in 2011, St. Luke's employed 7 physicians who had been employed by Saint Alphonsus Medical Group. After their employment, these physicians virtually ceased admitting inpatients to Saint Alphonsus Nampa, and dramatically reduced their outpatient utilization of Saint Alphonsus Nampa. This is consistent with the pattern after St. Luke's

acquisitions of physician practices in Boise, where the physicians whose practices were acquired reduced their admissions at Saint Alphonsus by more than 90% after the acquisitions.

ANSWER: St. Luke's admits that in 2011, St. Luke's employed seven physicians who had been previously affiliated with Saint Alphonsus Medical Group. St. Luke's denies the remaining allegations of Paragraph 55.

56. Another example relates to St. Luke's employed oncologists, who work in a facility across the street from Saint Alphonsus Nampa. Before Saint Alphonsus acquired this hospital from Catholic Health Initiatives in 2009, those oncologists had been regularly practicing at the hospital. Immediately after the acquisition, they ceased doing so and resigned from the Saint Alphonsus Nampa medical staff.

ANSWER: St. Luke's admits that it employs oncologists who work in a facility across the street from Saint Alphonsus Nampa. Further answering, St. Luke's states that after Saint Alphonsus acquired Mercy Medical Center, it terminated a joint venture for oncology services between St. Luke's Regional Medical Center and Mercy Medical Center. St. Luke's admits that some time thereafter the physicians no longer had privileges at Mercy Medical Center. St. Luke's denies the remaining allegations of Paragraph 56.

57. When St. Luke's acquired the Boise Orthopedic Group, those physicians were partners in TVH and performed approximately 300 cases per year at the hospital. After the group was acquired by St. Luke's, those surgeons did not perform any procedures at TVH.

ANSWER: St. Luke's admits that it acquired Boise Orthopedic Center but denies the remaining allegations of Paragraph 57.

58. St. Luke's and Saltzer's statements make clear that the same pattern will follow a Saltzer acquisition by St. Luke's. Saltzer's CEO, John Kaiser, has recently told Saltzer physicians that any patients taken to Saint Alphonsus or Treasure Valley would not be supportive of the group's overall goals.

ANSWER: St. Luke's denies the allegations of Paragraph 58.

The Relevant Product Markets

Primary Care Physician Services

59. One relevant product market in this case is the market for adult primary care physician services sold to commercial third party payers ("primary care physician services"). This market encompasses services offered by physicians practicing internal medicine, family practice, and general practice. Primary care physicians provide both the first contact for a person with an undiagnosed health concern as well as continuing care of varied medical conditions, not limited by cause, organ system, or diagnosis.

ANSWER: St. Luke's denies that the relevant product market for adult primary care physicians services is limited to commercial third party payers. St. Luke's also denies that primary care physicians always provide the first contact for a person with an undiagnosed health concern and that such physicians always provide continuing care of varied medical conditions. St. Luke's admits the remaining allegations of Paragraph 59.

60. Other physicians cannot and will not provide adult primary care services to most adult patients, because they are not trained to provide these services. Some OB/GYN specialists provide primary care to adult female patients, but they do not do so for adult males. Health plans would not be able to sell an insurance product without a broad selection of adult primary care physicians within that product's physician panel. Likewise, patients generally would not, and do not, seek primary care services from physicians who are not primary care physicians. If faced with a price increase by a hypothetical monopolist for adult primary care services, health plans would be forced to agree to the price increase because access to adult primary care physicians is essential to successfully market a health insurance product. As a result, other types of physicians are not reasonably interchangeable or substitutes for adult primary care physicians.

ANSWER: St. Luke's admits that many physicians who are not primary care physicians will not provide adult primary care services to patients. St. Luke's also admits that some OB/GYN specialists provide primary care to adult female patients, but not to adult males. St. Luke's admits that many patients generally do not seek primary care services from physicians who are not primary care physicians. St. Luke's denies the remaining allegations of Paragraph 60.

61. As a result of the nature of the practice, many patients establish strong loyalties to their primary care physicians. One recent survey found that 87% of commercially-insured patients have a regular employed primary care physician, and 74% of these said that they are

satisfied with their care. The survey also found that fewer than 15% switch primary care physicians in a year.

ANSWER: St. Luke's admits that some patients establish strong loyalties to their primary care physicians. St. Luke's lacks sufficient information to admit or deny the remaining allegations of Paragraph 61 and therefore denies them.

62. As the first point of entry into the health care system and the physician that is likely to have the most contact and most long-lasting relationship with a patient, primary care physicians can hold great influence over which hospital or specialist a patient will seek additional care with if necessary. In a study published by the Center for Studying Health System Change, it was reported that almost 70 percent of patients chose a specialist because of their primary care physician's referral.

ANSWER: St. Luke's admits that ethical primary care physicians make referral recommendations based on their judgment regarding the best medical interests of patients. St. Luke's lacks information regarding the allegations of the second sentence of Paragraph 62 and therefore denies those allegations. St. Luke's denies the remaining allegations of this paragraph.

63. The relevant market does not include adult primary care physician services paid for by Medicare or Medicaid, because these government programs fix their fees and therefore do not compete for these services. A hospital, physician group or physician offering adult primary care physician services could not increase its volume or revenue by persuading patients to sign up for Medicare or Medicaid, because enrollment in these programs is limited to the elderly, disabled or underprivileged. Medicare and Medicaid typically pay significantly lower rates than do commercial insurers and, therefore, are not an alternative to them.

ANSWER: St. Luke's admits that Medicare and Medicaid fix the amounts that they pay for physician services. St. Luke's admits that Medicare covers the aged and disabled, and that Medicaid covers the "deserving poor" in participating states. St. Luke's also admits that Medicare and Medicaid often pay lower reimbursement rates than do commercial insurers. St. Luke's denies the remaining allegations of Paragraph 63.

General Acute-Care Inpatient Services Market

64. Another relevant market is the market for general acute-care inpatient hospital services sold to commercial third party payers ("general acute-care services"). General acute-care services encompass a broad cluster of medical and surgical diagnostic and treatment

services that include an overnight hospital stay, including, but not limited to, many emergency services, internal medicine services, and surgical procedures.

ANSWER: St. Luke's admits that general acute-care inpatient hospital services encompass a broad cluster of medical services. Further answering, St. Luke's states that TVH considers itself to be in the market for general acute care inpatient hospital services, but does not offer emergency services. St. Luke's denies the remaining allegations of Paragraph 64.

65. The general acute-care services market does not include outpatient services (those not requiring an overnight hospital stay) because such services are offered by a different set of competitors under different competitive conditions. Outpatient hospital services are not reasonably interchangeable with inpatient hospital services, and health plans and patients could not substitute outpatient services for inpatient services in response to a small but significant price increase. The treatment that requires an inpatient hospital stay cannot be effectively treated on an outpatient basis. Similarly, the most complex and specialized tertiary and quaternary services, such as certain major surgeries and organ transplants, also are not part of the relevant cluster of services because they generally are not available in the Boise area, are offered by a different set of suppliers under different competitive circumstances, and are not substitutes for general acute-care services.

ANSWER: St. Luke's admits that inpatient services cannot always be effectively provided on an outpatient basis, and that inpatient services and "the most complex and specialized tertiary and quaternary services" are often "offered by a different set of suppliers." St. Luke's denies the remaining allegations of Paragraph 65.

66. The relevant market does not include general acute-care services paid for by Medicare or Medicaid, because these government programs fix their fees and therefore do not compete for these services. A hospital offering general acute-care services could not increase its volume or revenue by persuading patients to sign up for Medicare or Medicaid, because enrollment in these programs is limited to the elderly, disabled or underprivileged. Medicare and Medicaid typically pay significantly lower rates than do commercial insurers and, therefore, are not an alternative to them.

ANSWER: St. Luke's admits that Medicare and Medicaid fix the amounts that they pay for general acute-care inpatient hospital services. St. Luke's admits that Medicare covers the aged and disabled, and that Medicaid covers the "deserving poor" in participating states. St.

Luke's also admits that that Medicare and Medicaid often pay lower reimbursement rates than do commercial insurers. St. Luke's denies the remaining allegations of Paragraph 66.

General Pediatric Physician Services

67. Another relevant market is the market for general pediatric physician services sold to commercial third party payers ("general pediatric physician services"). The medical specialty of general pediatrics focuses on the medical care of infants, children, and adolescents. The services provided by pediatricians require specific expertise about infants and children. Most adult primary care physicians lack this expertise.

ANSWER: St. Luke's denies that the relevant product market for general pediatric physician services is limited to commercial third party payers. St. Luke's admits the remaining allegations of Paragraph 67.

68. Many patients would not, and do not, seek general pediatric services from physicians who are not general pediatricians. As a result, Treasure Valley area health plans would not be able to sell an insurance product without a broad selection of general pediatricians within that product's physician panel. Each health plan operating in the Treasure Valley has general pediatricians on its panel of providers. If faced with a price increase by a hypothetical monopolist for general pediatric services, health plans would be forced to agree to the price increase, because access to general pediatricians is essential to successfully market a health insurance product. For these reasons, other types of physicians are not reasonably interchangeable or substitutes for general pediatricians.

ANSWER: St. Luke's lacks knowledge or information sufficient to form a belief about the truth of the allegations of the third sentence and therefore denies those allegations. St. Luke's denies the remaining allegations of Paragraph 68.

69. The relevant market does not include pediatric subspecialists, who treat specialty conditions such as pediatric cardiology, pediatric oncology or pediatric surgery. Subspecialists do not provide the day to day routine care of children that is provided by general pediatricians, and are therefore not substitutes for general pediatricians.

ANSWER: St. Luke's admits the allegations of Paragraph 69.

70. The relevant market also does not include general pediatric services paid for by Medicaid, because this government program fixes its fees and therefore does not compete for these services. A hospital, physician group or physician offering general pediatric services could not increase its volume or revenue by persuading patients to sign up for Medicaid, because enrollment in these programs is limited to the disabled or underprivileged. Medicaid typically

pays significantly lower rates than do commercial insurers and, therefore, is not an alternative to them. Of course, Medicare is not available to children.

ANSWER: St. Luke's admits that Medicaid fixes the amounts that it pays for general pediatric services. St. Luke's admits that Medicaid covers the "deserving poor" in participating states. St. Luke's also admits that Medicaid often pays lower reimbursement rates than do commercial insurers. St. Luke's denies the remaining allegations of Paragraph 70.

Outpatient Surgery Services

71. St. Luke's acquisitions also threaten substantial competitive harm in the market for outpatient surgery services sold to commercial third party payers ("outpatient surgery services"). Outpatient surgery, also known as ambulatory surgery, is surgery that does not require an overnight hospital stay. The outpatient surgery services market does not include general acute-care inpatient hospital services (those requiring an overnight hospital stay) because such services are offered by a different set of competitors under different competitive conditions. Patients receiving general acute care services, including inpatient surgery, rather than outpatient surgery, do so because either they are too sick to receive surgery on an outpatient basis or because the surgery they require is sufficiently serious that an inpatient stay is necessary after the surgery. As a result, general acute-care inpatient hospital services are not reasonable substitutes for outpatient surgery services, and health plans and patients could not substitute outpatient surgery services for inpatient surgery services in response to a small but significant price increase.

ANSWER: St. Luke's admits that outpatient surgery is surgery that does not involve an overnight stay at the hospital. St. Luke's denies the remaining allegations of Paragraph 71.

72. The relevant market does not include outpatient surgery services paid for by Medicare or Medicaid, because these government programs fix their fees and therefore do not compete for these services. A hospital or surgery center offering outpatient surgery services could not increase its volume or revenue by persuading patients to sign up for Medicare or Medicaid, because enrollment in these programs is limited to the elderly, disabled or underprivileged. Medicare and Medicaid typically pay significantly lower rates than do commercial insurers and, therefore, are not an alternative to them.

ANSWER: St. Luke's admits that Medicare and Medicaid fix the amounts that they pay for outpatient surgery services. St. Luke's admits that Medicare covers the aged and disabled, and that Medicaid covers the "deserving poor" in participating states. St. Luke's also admits that that Medicare and Medicaid often pay lower reimbursement rates than do commercial insurers. St. Luke's denies the remaining allegations of Paragraph 72.

The Relevant Geographic Markets

Primary Care and General Pediatric Physician Services

73. The relevant geographic market with respect to primary care and general pediatric physician services is no broader than Nampa, Idaho. Nampa residents strongly prefer to obtain primary care and pediatric physician services in Nampa. Because patients generally obtain primary care and pediatric services frequently and often require immediate treatment, such as when they, or their children, have a cold or the flu, they are unwilling to travel long distances to seek primary care or pediatric physician services, and their preference for access to local providers is strong.

ANSWER: St. Luke's denies the allegations of Paragraph 73.

74. More than 75% of Saltzer's patients come from Nampa, where its main clinic is located. About 80% of Saint Alphonsus Medical Group primary care patients seen in Nampa come from Nampa, and about 80% of the Nampa patients who see a Saint Alphonsus Medical Group physician do so in Nampa. Most patients in Nampa utilizing the Saint Alphonsus Medical Group primary care physicians travel, on average, less than 10 miles for their care.

ANSWER: St. Luke's denies the allegations of the first sentence of Paragraph 74. St. Luke's lacks sufficient knowledge to admit or deny the remaining allegations of Paragraph 74 and therefore denies them.

75. It is very important to Nampa patients that their primary care doctors are conveniently located (*e.g.*, "close to home") and readily accessible. For example, Saint Alphonsus Medical Group advertises its clinics as being "close to home," being open on weekends and holidays and being committed to seeing patients the very same day they feel sick with its "Sick Today/Seen Today" program. The tagline for its clinics is: "Convenient Care. Close to Home."

ANSWER: St. Luke's admits that Saint Alphonsus advertises its clinics as stated in Paragraph 75. St. Luke's does not know what "conveniently located" and "close to home" mean in the context of the paragraph and therefore denies the allegations of the first sentence of the paragraph. St. Luke's denies the remaining allegations of Paragraph 75.

76. Because of the desire of patients to have easy access to a nearby primary care doctor, primary care providers develop a network of multiple small primary care offices in local

communities very near their patients. For example, Saint Alphonsus Medical Group has a series of small, local offices in Nampa, with separate clinics in Caldwell and Meridian. Similarly, Primary Health has eleven different clinics in the Treasure Valley. Saltzer has additional offices in Meridian and Caldwell.

ANSWER: St. Luke's admits that Saint Alphonsus Medical Group, Primary Health, and Saltzer have multiple offices. St. Luke's denies the remaining allegations of Paragraph 76.

77. While Caldwell and Nampa are only about 12 miles apart, their medical communities are quite distinct. Physicians in Caldwell predominantly focus their practices on Caldwell. For example, the employed Saint Alphonsus primary care physicians at the Saint Alphonsus Medical Group clinic in Caldwell admit few or no inpatients at Saint Alphonsus Nampa.

ANSWER: St. Luke's admits that Caldwell and Nampa are approximately 12 miles apart. St. Luke's lacks knowledge or information sufficient to form a belief about the truth of the allegations contained within the last sentence and therefore denies these allegations. St. Luke's denies the remaining allegations of Paragraph 77.

78. As a result, health plans must include primary care physicians and pediatricians from Nampa in order to meet their members' needs, and all area health plans do so. Thus, a hypothetical monopolist that controlled all of the primary care physicians or pediatricians in Nampa could profitably increase rates by at least a small but significant price.

ANSWER: St. Luke's denies the allegations of Paragraph 78.

79. In the alternative, the geographic market for primary care services and general pediatrician services is no broader than (a) Canyon County, (b) Canyon County and Meridian, Idaho, or (c) Nampa and Meridian, Idaho only. Locations outside these areas (including Eagle and Boise, Idaho) are too far for the vast majority of patients to travel for primary or pediatric care. Only approximately 5% and less than 1% of Nampa residents seek primary care services from physicians located in Boise and Eagle, respectively. Similarly, only approximately 2% and 1% of Nampa residents seek general pediatrician services from physicians located in Eagle and Boise, respectively. Therefore, over 93% and 97% of Nampa residents seek primary care and general pediatrician services, respectively, in Canyon County and Meridian.

ANSWER: St. Luke's denies the allegations of the first two sentences of Paragraph 79. St. Luke's lacks knowledge or information sufficient to form a belief about the remaining allegations of Paragraph 79 and therefore denies them.

80. Patricia Richards, the Chief Executive of SelectHealth, has stated that "[i]f [SelectHealth] is to be competitive in southern Idaho, we need to have substantial primary care physicians coverage in Canyon County." Ex. F. Dr. David Pate, St. Luke's CEO, has stated that he "believe[s] that the integration of the Saltzer Medical group is critical to enable [St. Luke's] to provide high quality care at reduced prices in Canyon County." He also stated that "[b]y [Saltzer] affiliating with [St. Luke's]… St. Luke's will … have the physicians we need to be competitive in Canyon County…." Ex. G. If the geographic market were expanded to include (a) Canyon County, (b) Canyon County and Meridian, Idaho, or (c) Nampa and Meridian, Idaho only, a hypothetical monopolist that controlled all of the primary care physicians or pediatricians in those areas could profitably increase rates by at least a small but significant price.

ANSWER: St. Luke's admits that Patricia Richards made the statement quoted in the first sentence of Paragraph 80. St. Luke's also admits that Dr. David Pate made the statements quoted in the second and third sentences of Paragraph 80. St. Luke's denies the remaining allegations of Paragraph 80.

General Acute-Care Inpatient Services

81. The relevant geographic market in which to analyze the effects of the Saltzer acquisition on general acute-care services is no broader than Boise City-Nampa Metropolitan Statistical Area ("Boise Area"). (The Boise area includes hospitals owned by St. Luke's, Saint Alphonsus, TVH, West Valley Medical Center and Walter Knox Memorial Hospital, a small critical access hospital in Emmett, Idaho.) Unlike for primary care or general pediatric services, patients seeking general-acute services tend to have more serious medical conditions and seek these services much less frequently. As a result, they are willing to travel greater distances for care, but still not willing to travel substantial distances beyond Canyon or Ada counties. In fact, there are no competitive alternatives for general-acute care services outsides of the Boise Area (other than those owned by St. Luke's or Saint Alphonsus Health System) within any reasonable distance from those counties. The closest comparable hospitals to Saint Alphonsus and St. Luke's outside of the Boise Area are more than 200 miles away from the Treasure Valley. As a result, hospitals outside of the relevant market do not meaningfully compete for general acute care services with the hospitals in the area.

ANSWER: St. Luke's is not sure what is meant by the phrases "general acute-care services," "comparable hospitals," and "meaningfully compete" as they are used in this paragraph and therefore denies the allegations relating to those phrases. St. Luke's denies the remaining allegations of Paragraph 81.

Outpatient Surgery Services

82. The relevant geographic market in which to analyze the effects of the Saltzer acquisition on outpatient surgery services is no broader than the Boise Area. There are no competitive alternatives for outpatient surgery services which are outside of the Boise Area within any reasonable distance from this area. The closest comparable providers of outpatient surgery services are more than 100 miles from Boise. Hospitals or surgery centers outside of Ada and Canyon counties do not meaningfully compete with outpatient surgery centers in this area.

ANSWER: St. Luke's is not sure what is meant by the phrases "reasonable distance," "comparable providers," and "meaningfully compete" as they are used in this paragraph and therefore denies the allegations relating to those phrases. St. Luke's denies the remaining allegations of Paragraph 82.

ANTICOMPETITIVE EFFECTS

Adult Primary Care Physician Services

83. If St. Luke's completes its acquisition of Saltzer, it will possess a near-monopoly position in the relevant Nampa area adult primary care physician services market. The Saltzer acquisition will result in a concentrated primary care physician services market with only two significant competitors. St. Luke's post-acquisition market share in the relevant primary care physician services market in Nampa will exceed 67%.

ANSWER: St. Luke's denies that "relevant primary care physician services market in Nampa" is a relevant market for antitrust purposes. St. Luke's denies the remaining allegations of Paragraph 83.

84. Under the Merger Guidelines HHI test, a merger is presumed likely to create or enhance market power (and presumed illegal) when the post-merger HHI exceeds 2500 points and the merger or acquisition increases the HHI by more than 200 points. The market concentration levels here exceed these thresholds by a wide margin. The post-acquisition HHI in the primary care physician services market in Nampa will increase by over 2,100 points to over 5,000.

ANSWER: St. Luke's states that the Merger Guidelines speak for themselves. Further answering, St. Luke's states that the affiliation with Saltzer is not a "merger" and that the Merger Guidelines have, at most, limited applicability to that transaction. St. Luke's denies the remaining allegations of Paragraph 84.

85. If the market was broadened to include (a) Canyon County, (b) Canyon County and Meridian or (c) Nampa and Meridian only, the post-acquisition HHI would still exceed these thresholds. The post-acquisition HHI in a primary care physician services market in Canyon County will increase by over 700 points to over 2,800; the post-acquisition HHI in a primary care physician services market in Canyon County and Meridian will increase by over 990 points to over 2,800; the post-acquisition HHI in a primary care physician services market in Nampa and Meridian only will increase by over 1,600 points to over 4,000.

ANSWER: St. Luke's denies the allegations of Paragraph 85. Further answering, St. Luke's states that the affiliation with Saltzer is not a "merger" and that the Merger Guidelines have, at most, limited applicability to that transaction.

86. With the addition of the Saltzer physicians to its physician network, St. Luke's will become a "must-have" system for health plans seeking to serve companies with employees in Nampa, because health plans will no longer be able to offer a commercially viable provider network to those companies without including St. Luke's. Like the employees of Simplot and Mercy Medical Center, those employees will demand including the Saltzer physicians (as well as the St. Luke's physicians). Health plans will no longer have the ability to drop St. Luke's from their networks, or even credibly threaten to do so. Thus, health plans in the area now must either reach agreement with St. Luke's, likely at substantially higher rates, offer a commercially unattractive health care network to their members, or be forced to exit Nampa altogether.

ANSWER: St. Luke's denies the allegations of Paragraph 86.

87. This significant change in the negotiating dynamic will give St. Luke's much enhanced bargaining clout in contract negotiations and the ability to extract higher rates for inpatient services at all of its hospitals.

ANSWER: St. Luke's denies the allegations of Paragraph 87.

88. Price increases resulting from the acquisition will be passed on to local employers and their employees. Self-insured employers pay the full cost of their employees' health care claims and, as a result, they will immediately and directly bear the full burden of higher rates charged by hospitals or physicians. Fully-insured employers will also inevitably be harmed by higher rates, because health plans will be forced to pass on at least a portion of hospital rate increases to these customers.

ANSWER: St. Luke's denies the allegations of Paragraph 88.

89. Employers, in turn, will pass on their increased health care costs to their employees, in whole or in part. Employees will bear these costs in the form of higher premiums, higher co-pays, reduced coverage, and/or restricted services. Some Nampa area residents will forego or delay necessary health care services because of the higher costs, and others may drop their insurance coverage altogether.

ANSWER: St. Luke's denies the allegations of Paragraph 89.

90. This enhancement of St. Luke's market power will also be used to exclude competition by rivals, including all of the Plaintiffs. St. Luke's has already shown that it intends to use its market power resulting from the acquisition of numerous physician practices to demand that employers and payors take business from other providers and channel it, sometimes exclusively, to St. Luke's. For example, St. Luke's recently demanded that Micron add St. Luke's to the Micron network where the St. Alphonsus hospitals and physicians have been the preferred choice for Micron employees because of the lower price and high quality Saint Alphonsus provides to Micron. St. Luke's was able to do so because of its recent acquisition of many popular physician groups desired by Micron employees. Micron was prepared to acquiesce to St. Luke's demands, even at higher prices, in order to satisfy its employees' desire to utilize these popular doctors acquired by St. Luke's until it determined that those demands would likely require a 30% increase in Micron's overall health care costs. Similarly, St. Luke's has demanded that other payors provide it with an exclusive or preferred status.

ANSWER: St. Luke's denies the allegations of Paragraph 90.

91. Past actions by St. Luke's and recent statements by Saltzer, provide further evidence that these effects are highly likely. Four years ago, when Saint Alphonsus was awarded the preferred position in the Micron network, the development of the network also required a "backup" PPO network of non-Saint Alphonsus providers. St. Luke's attempted to sabotage that network by threatening two different PPOs that it would no longer participate with them if they provided a backup network for Micron. As a result, both PPOs backed out of the Micron transaction and alternatives had to be sought.

ANSWER: St. Luke's denies the allegations of Paragraph 91.

92. Recently, Saltzer has indicated that it no longer desires to participate with Saint Alphonsus Nampa in providing a network for the "True Blue" Medicaid Advantage product offered by Blue Cross. This would substantially reduce the attractiveness of a Saint Alphonsus Nampa network to Medicare Advantage patients. The decision by Saltzer was undoubtedly motivated by the pending St. Luke's transaction.

ANSWER: St. Luke's denies the allegations of Paragraph 92.

93. If St. Luke's acquires Saltzer, its ability to demand that employers and payors set aside their procompetitive decisions to utilize lower price providers, and to require them to prefer St. Luke's, will be substantially enhanced.

ANSWER: St. Luke's denies the allegations of Paragraph 93.

General Pediatric Physician Services

94. If St. Luke's completes its acquisition of Saltzer, it will possess a near-monopoly position in the relevant Nampa area general pediatric services market. Currently, Saltzer employs all but one of the general pediatricians in Nampa. The acquisition of Saltzer by St.

Luke's would transfer this market share from Saltzer to St. Luke's and would further enhance St. Luke's market power by strengthening its "must-have" provider status, described above. Since health plans seeking to serve companies with employees in Nampa need to offer general pediatricians who are convenient to those employees, the control of virtually all the pediatricians in Nampa by St. Luke's will further enhance its market power, and make it even more difficult for health plans to negotiate reasonable rates with St. Luke's. Similarly, this additional power will give St. Luke's an even greater ability to demand a preferential position with employers and health plans, and to stymie procompetitive offers by competitors such as Saint Alphonsus and TVH.

ANSWER: St. Luke's admits that Saltzer employs most of the general pediatricians in Nampa, but denies the remaining allegations of Paragraph 94.

95. If the geographic market was broadened to include (a) Canyon County and Meridian, or (b) Nampa and Meridian only, there exist significant horizontal overlaps between St. Luke's pediatricians and Saltzer's pediatricians which would result in a merger that is presumed likely to create or enhance market power under the Horizontal Merger Guidelines HHI test. If the geographic market were expanded to include Meridian and Nampa only, St. Luke's post-acquisition market share in the relevant general pediatrician services market will exceed 75% and the post-acquisition HHI in that market will increase by 2,500 points to over 5,800. If the geographic market were broadened to include Canyon County and Meridian, St. Luke's post-acquisition market share in the relevant general pediatrician services market will exceed 62% and the post-acquisition HHI in that market will increase by over 1,700 points to over 4,200.

ANSWER: St. Luke's denies the allegations of Paragraph 95. Further answering, St. Luke's states that the affiliation with Saltzer is not a "merger" and that the Merger Guidelines have, at most, limited applicability to that transaction.

96. If the geographic market included only Canyon County, following St. Luke's acquisition of Saltzer, it will possess a dominant position in the relevant Canyon County general pediatric services market. St. Luke's market share (by head count) will be over 57%, with the HHI for this market exceeding 4,500, indicating a "highly concentrated" market for general pediatrician services. The acquisition of Saltzer by St. Luke's would transfer this market share from Saltzer to St. Luke's and would further enhance St. Luke's market power by strengthening its "must-have" provider status, described above.

ANSWER: St. Luke's denies the allegations of Paragraph 96.

General Acute-Care Inpatient and Outpatient Surgery Services

97. The Saltzer acquisition will also increase St. Luke's dominance in the general acute-care services and outpatient surgery services markets in the Boise Area. St. Luke's market share (as measured by total discharges) is currently 58% in Ada and Canyon counties combined resulting in a similar HHI. The pre-acquisition HHI for this market exceeds 4,500, indicating a

"highly concentrated" market for general acute care inpatient hospital services. With respect to outpatient surgery services, St. Luke's market share (as measured by surgery rooms) is currently 54% in Ada and Canyon counties combined, resulting in a similar HHI. St. Luke's acquisition of Saltzer will increase St. Luke's market share and lessen competition in the markets for acute-care inpatient hospital services and outpatient surgery.

ANSWER: St. Luke's denies the description of the relevant market in the paragraph and denies the remaining allegations of Paragraph 97.

98. St. Luke's acquisition of Saltzer will result in the foreclosure of a critical source of patients (and admissions) — the Saltzer physicians. Saltzer physicians currently provide a significant number of Saint Alphonsus Nampa's inpatients, a substantial amount of the hospital's revenues, and an even higher percentage of their higher paying commercially insured patients. Saltzer is critical to the economic well-being of that hospital.

ANSWER: St. Luke's denies the allegations of the first sentence of Paragraph 98. St. Luke's lacks sufficient knowledge to admit or deny the remaining allegations of Paragraph 98 and therefore denies those allegations.

99. The acquisition will also foreclose a significant source of volume for TVH. More than 40% of its inpatient and outpatient cases are performed by Saltzer physicians.

ANSWER: St. Luke's denies the allegations of Paragraph 99.

100. The evidence is overwhelming that the acquisition of Saltzer by St. Luke's will substantially foreclose competition for the admissions of the Saltzer physicians. The behavior of St. Luke's leaves no doubt that these admissions will cease – almost as quickly as a spigot can be turned off – after the acquisition. For example:

- When St. Luke's has acquired physician groups in the past, their inpatient admissions at Saint Alphonsus Boise have declined by more than **90%**, in several cases by **100%**.

- When St. Luke's acquired seven physicians employed by SAMG in Nampa, their admissions at Saint Alphonsus Nampa declined to virtually **zero**.

- When Saint Alphonsus acquired Mercy Medical Center, the St. Luke's oncologist located *across the street* from Saint Alphonsus Nampa nevertheless ceased practicing at that hospital.

- Since St. Luke's acquired the Boise Orthopedic Group, those surgeons went from performing 10-15% of all surgeries at TVH, to not performing any procedures at all at TVH.

- In internal conversations, Saltzer's leadership has confirmed that this pattern will follow this acquisition. Indeed, Saltzer's president recently said that "any patients taken to Saint Al's or Treasure Valley is not supportive of [Saltzer's] overall goals."

ANSWER: St. Luke's denies the allegations of Paragraph 100.

101. As a result, this foreclosure of competition will very likely increase St. Luke's dominance in the general acute-care services and outpatient surgery services markets. The foreclosure of competition for the referrals and admissions of Saltzer physicians will shift even more market share from Saint Alphonsus and TVH to St. Luke's, strengthening St. Luke's while weakening its competitors.

ANSWER: St. Luke's denies the allegations of Paragraph 101.

102. St. Luke's will not acquire the orthopedic surgeons, general surgeon and ear, nose and throat specialists employed by Saltzer; those physicians have decided to obtain employment with Saint Alphonsus. Those physicians chose not to go to St. Luke's both because they received less attractive offers than the Saltzer primary care physicians and because St. Luke's conditioned significant payments on their agreement to no longer send patients to TVH, but to exclusively admit to St. Luke's. Such agreements would have harmed TVH, which provides surgical care at prices 40% less than St. Luke's.

ANSWER: St. Luke's admits that several specialists, including five orthopedic surgeons, a general surgeon, and an otolaryngologist, have left Saltzer and joined Saint Alphonsus. St. Luke's denies the remaining allegations of Paragraph 102.

103. However, a Saltzer transaction will nevertheless seriously harm these physicians, TVH, and their patients. These physicians depend critically on Saltzer primary care physician referrals for their patients. After this transaction, those referrals will go to St. Luke's surgeons. On November 1, 2012, Saltzer sent a letter to its patients informing them of the departure of the five orthopedic surgeons, and told its patients that it was in the process of recruiting new orthopedic surgeons, that it was "currently working close[ly] with the St. Luke's orthopedic department" and that patients should call St. Luke's to schedule an appointment for surgery. See Ex. E.

ANSWER: St. Luke's admits that Saltzer sent a letter on November 1, 2012 informing its patients of the departure of the orthopedic surgeons and of its efforts to recruit new orthopedic surgeons. St. Luke's further admits that the letter stated that Saltzer was "working closely" with St. Luke's orthopedic department and that patients should contact St. Luke's to schedule an appointment. Further answering, St. Luke's states that the letter also stated, "If your preference is to stay with one of the above named [departing] providers, they are taking phone calls at 288-4700. Their addresses will be 4400 E. Flamingo Ave, Nampa and 3025 W. Cherry Lane, Meridian." St. Luke's denies the remaining allegations of Paragraph 103.

104. The harm to Saint Alphonsus Nampa and TVH, will also result in substantial harm to competition. The only hospital alternatives a payor has to St. Luke's in a Treasure Valley network are Saint Alphonsus, TVH and West Valley Medical Center (which focuses on the Caldwell area).

ANSWER: St. Luke's admits that the hospital alternatives a payer has to St. Luke's in a Treasure Valley network are Saint Alphonsus and West Valley Medical Center. St. Luke's denies the remaining allegations of Paragraph 104.

105. The foreclosure of patients from Saltzer will significantly weaken Saint Alphonsus Nampa and TVH. This will make it much more difficult for a health plan to rely on a network that does not include St. Luke's if St. Luke's makes exorbitant price demands, as it has (successfully) in the Magic Valley. This will further enhance St. Luke's dominant market power.

ANSWER: St. Luke's denies the allegations of Paragraph 105.

Entry Barriers

Primary Care and General Pediatric Physician Services

106. Neither primary care or general pediatric physician entry or expansion by any existing physician practice group or hospital will be sufficient, timely or likely to offset the anticompetitive effects described above. There is no prospect that such entry will materially reduce the harm to competition from St. Luke's primary care and pediatrician acquisitions.

ANSWER: St. Luke's denies the allegations of Paragraph 106.

107. Recruitment of new primary care physicians or pediatricians into the Treasure Valley is difficult, because there is no medical school in Idaho that could provide a group of medical school graduates who are familiar with, and would like to stay in, the area. There is a family practice residency program in Boise, but the program is focused on rural medicine, and very few residents from the program practice in the Treasure Valley. Moreover, recruitment is especially difficult to a working class community such as Nampa.

ANSWER: St. Luke's admits that there is a family practice residency program in Boise that focuses on family medicine. St. Luke's denies the remaining allegations of Paragraph 107.

108. An additional problem exists relating to recruitment of general internal medicine physicians, desired by many patients. Very few new general internists are beginning practice. In the entire United States, only about 200 new internal medicine physicians complete their residency and go into general ambulatory/clinic internal medicine practice every year. The vast majority of physicians participating in internal medicine residencies go on to specialize in a particular field. As a result, it is extremely difficult to recruit any general internists. Saltzer employs all general internists in Nampa.

ANSWER: St. Luke's denies the allegations of the last two sentences. St. Luke's lacks sufficient information to admit or deny the remaining allegations of Paragraph 108 and therefore denies them.

109. Another substantial barrier to entry is that any new primary care physicians or pediatricians will have great difficulty attracting patients in a market where the patients already have loyalties to existing primary care physicians and pediatricians. Nationally 87% of insured consumers have a regular employed physician, and 74% of these say they are satisfied with their care. Fewer than 15% switch doctors in a year. Such loyalty is especially present with regard to patients of the very popular and successful Saltzer group.

ANSWER: St. Luke's admits the existence of the national survey data referenced in the second and third sentences of Paragraph 109. St. Luke's denies the remaining allegations of Paragraph 109.

110. Even when Saint Alphonsus is successful in recruiting physicians, and they ultimately are able to attract a substantial patient load, this involves very substantial delays. It typically takes a year or longer to recruit a primary care physician or pediatrician from the date recruitment begins to the date the primary care physician starts on the job. It takes another two years or more for that physician to develop his or her practice, when even that is possible. Therefore, entry will not be sufficiently timely to offset the effect of St. Luke's anticompetitive practices. In fact, there is no possibility that entry could occur in any period of time that would be sufficient to offset the competitive impact of the acquisition of the large Saltzer group by St. Luke's.

ANSWER: St. Luke's denies the allegations of Paragraph 110.

General Acute-Care Inpatient Services

111. Neither hospital entry nor expansion by any hospital will deter or counteract St. Luke's prior or proposed acquisitions' likely harm to competition in the relevant markets.

ANSWER: St. Luke's denies the allegations of Paragraph 111.

112. New hospital entry or significant expansion in the Boise area would not be timely. Construction of a new general acute-care hospital would take more than two years from the initial planning stages to opening doors to patients. Entry and expansion are also unlikely due to very high construction costs, operating costs, and financial risk. St. Luke's has stated that if it constructs a new hospital in Nampa construction alone will take 24-30 months. No new hospital facility has been constructed in the Treasure Valley since TVH in 1996 and St. Luke's Meridian in 2001.

ANSWER: St. Luke's admits that its construction of a new general acute care hospital will take more than two years from the initial planning stages to opening. St. Luke's admits that it has stated that its construction of a new hospital in Nampa would take 24-30 months. St. Luke's is not sure what is meant by the phrase "new hospital facility" as it is used in the last sentence and therefore denies the allegations of that sentence. St. Luke's denies the remaining allegations of Paragraph 112.

113. Construction and operation of an independent competitive hospital is likely to be especially difficult, given the large number of physicians employed by St. Luke's, since these physicians are unlikely to admit patients at a competitive hospital. Such a hospital would have a very difficult time attracting admissions and operating successfully.

ANSWER: St. Luke's denies the allegations of Paragraph 113.

Outpatient Surgery Services

114. Neither outpatient surgery services entry nor expansion by any hospital or physician group will deter or counteract the likely harm to competition in the relevant markets due to St. Luke's price or proposed acquisitions.

ANSWER: St. Luke's denies the allegations of Paragraph 114.

115. New outpatient entry or significant expansion in the Boise area would not be timely. Construction of a new outpatient facility would take more than two years from the initial planning stages to opening doors to patients. Entry and expansion are also unlikely due to very high construction costs, operating costs, and financial risk, along with significant outpatient facility overcapacity in the Boise area.

ANSWER: St. Luke's denies the allegations of Paragraph 115.

116. Construction and operation of an independent outpatient surgery facility is also likely to be very difficult given the large number of surgeons employed by St. Luke's, since these surgeons are unlikely to admit patients at a competitive hospital. Such a hospital would have a very difficult time attracting admissions and operating successfully. Certainly, facilities will not be constructed with sufficient capacity to offset the effect of St. Luke's anticompetitive activities.

ANSWER: St. Luke's denies the allegations of Paragraph 116.

Absence of Procompetitive Justifications

117. St. Luke's acquisition of Saltzer would not improve physician efficiency, productivity or quality. Saltzer already operates very efficiently, has lean staffing and a very effective billing office. There is no evidence in the economic literature that physician groups become more efficient at a size greater than the Saltzer group. Moreover, Saltzer's financial model, in which the physicians share in overhead to the extent of the patient revenue they generate, has created a culture which strongly encourages hard work. The same financial model will not apply when St. Luke's owns the practices.

ANSWER: St. Luke's admits that Saltzer did its best to operate efficiently and that its culture encouraged hard work. St. Luke's denies the remaining allegations of Paragraph 117.

118. This conclusion is consistent with the statements of St. Luke's own personnel to Saltzer. St. Luke's officials indicated that Saltzer's structure would remain the same after an acquisition and that "all that would change was the sign on the door." St. Luke's representative Peter LaFleur told Saltzer that it was difficult to justify the high payments to Saltzer physicians as part of the transaction, because Saltzer was already very efficient, and there were not significant opportunities for additional efficiencies that would create more profits after an acquisition.

ANSWER: St. Luke's denies the allegations of Paragraph 118.

119. St. Luke's will be unable to show that the acquisition will lead to any merger-specific efficiencies, i.e. efficiencies that are reasonably likely only after a merger or acquisition. In fact, St. Luke's has effectively admitted that any efficiencies resulting from its acquisition would not be merger-specific. For example, St. Luke's Health System Vice President of Payor and Provider Relations stated that "St. Luke's Health System is spending tens of millions of dollars and committing other valuable resources to implement an electronic medical record across *all our providers*" and that "a clinically integrated network is *not* necessarily a network of providers under common financial ownership…" Thus, St. Luke's has effectively admitted that the efficiencies that it hopes to obtain with its physicians can be obtained whether or not the physicians remain independent.

ANSWER: St. Luke's admits that the System Vice President of Payer and Provider Relations made the statements quoted in Paragraph 119. However, St. Luke's denies that through these statements St. Luke's has "effectively admitted that the efficiencies it hopes to obtain" can be achieved even if the physicians remain financially independent. St. Luke's denies the remaining allegations of Paragraph 119.

<u>Irreparable Injury As A Result of Saltzer Acquisition</u>

Saint Alphonsus Nampa

120. St. Luke's acquisition of Saltzer would be virtually certain to cause substantial irreparable injury to St. Luke's most significant competitor in the general acute-care services market, Saint Alphonsus. If St. Luke's were to acquire Saltzer, the effect on Saint Alphonsus Nampa would be particularly devastating.

ANSWER: St. Luke's denies the allegations of Paragraph 120.

121. A significant number of all inpatient admissions at Saint Alphonsus Nampa come from Saltzer physicians. Saltzer physicians are even more important to Saint Alphonsus Nampa than their share of admissions would indicate. Saltzer physicians tend to treat commercially insured patients who provide more revenues to the hospital.

ANSWER: St. Luke's lacks knowledge or information sufficient to form a belief about the truth of the first sentence of Paragraph 121 and therefore denies that allegation. St. Luke's denies the remaining allegations of Paragraph 121.

122. Like most institutions, Saint Alphonsus Nampa has very substantial fixed costs. The gain or loss of incremental patients can therefore have a significantly more than proportional impact on Saint Alphonsus Nampa's bottom line and margins. As a result of the loss of the patients at Saint Alphonsus Nampa attributable to Saltzer Medical Group, the hospital will face a multimillion dollar loss and will be several million dollars "in the red." Therefore, in order to cut its losses and to maintain a 2% net margin (the minimum necessary to fund future capital improvements), the hospital would need to reduce its staff by more than 140 full-time-equivalents ("FTEs").

ANSWER: St. Luke's admits the allegations of the first sentence of the paragraph but denies the remaining allegations of Paragraph 122.

123. The effect on Saint Alphonsus Nampa, its employees, its services and programs, and the Nampa community would be devastating;

- The job cuts would reduce Saint Alphonsus Nampa's staff by more than 25%.
- Such cuts would entail the substantial reduction or elimination of many programs and services.
- In particular, this could substantially affect Saint Alphonsus Nampa's ability to serve the poor and uninsured.

ANSWER: St. Luke's denies the allegations of Paragraph 123.

Treasure Valley Hospital

124. The transaction will also irreparably harm TVH. Cases performed by Saltzer Medical Group physicians are critical to the volume at, and success of, TVH. More than 40% of TVH's inpatient and outpatient cases are performed by Saltzer physicians.

ANSWER: St. Luke's denies the allegations of Paragraph 124.

125. If St. Luke's acquires Saltzer, and that results in a reduction of cases to be performed at TVH, this will have a dramatic negative effect on TVH, simply because of the great volume of business at TVH that is dependent on Saltzer. If TVH were to lose all its cases from Saltzer, it would need to lay off 10% of its staff. Even a loss of half these cases would have a very significant impact.

ANSWER: St. Luke's denies the allegations of Paragraph 125.

126. TVH has planned significant capital improvements for its facility, including an increase in the number of operating rooms from four to six, a new CT scanner, and improvements to its electronic medical records system. These improvements will benefit its patients and allow TVH to provide more low cost, high quality care to the community.

ANSWER: St. Luke's lacks knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 126 and therefore denies these allegations.

127. If St. Luke's acquires Saltzer, and that causes a significant reduction in Saltzer cases performed at TVH (as is anticipated), TVH will be forced to cancel or delay its improvements. This will be very harmful to both TVH and to the Nampa community.

ANSWER: St. Luke's denies the allegations of Paragraph 127.

128. The transaction will also cause patients to lose the benefit of lower cost surgeries at TVH. Those patients will be referred to St. Luke's surgeons who do their work at the higher cost St. Luke's facilities.

ANSWER: St. Luke's denies the allegations of Paragraph 128.

All Plaintiffs

129. The Saltzer transaction will also irreparably injure all the Plaintiffs, because it will increase the power of St. Luke's to (a) demand exclusivity and/or preferential treatment from payors and employers, (b) deny the Plaintiffs' competing networks access to the Saltzer physicians and thereby impede their effectiveness (as in the "True Blue" example described above), and (c) disrupt other arrangements which Plaintiffs have obtained through competitive pricing and quality care. Such actions threaten to substantially harm the market position of all of the Plaintiffs on an ongoing basis into the indefinite future.

ANSWER: St. Luke's denies the allegations of Paragraph 129.

130. Such actions will likely affect Plaintiffs' relationships with every significant payor and employer in the Treasure Valley. Because of the scope of this potential harm, its likely recurring nature in the future, and the impossibility of predicting precisely the consequences of St. Luke's further anticompetitive actions, this harm cannot reasonably be fully compensated through money damages. The only remedy that will prevent this significant and anticompetitive change in the market is a preliminary and then permanent injunction against the Saltzer transaction.

ANSWER: St. Luke's denies the allegations of Paragraph 130.

COUNT I

THREATENED VIOLATION OF SECTION 7 OF THE CLAYTON ACT

131. Saint Alphonsus and TVH restate and reallege the allegations of paragraphs 1 – 130 above hereof, as if fully restated herein.

ANSWER: St. Luke's incorporates its answers to all preceding paragraphs as if fully restated herein.

132. The effect of the proposed acquisition of Saltzer by St. Luke's would be to lessen competition substantially in interstate trade and commerce in violation of Section 7 of the Clayton Act, 15 U.S.C. §18.

ANSWER: The allegations of Paragraph 132 purport to state a legal conclusion to which an answer is not required. To the extent an answer is required, St. Luke's denies the allegations of Paragraph 132.

133. The transaction would likely have the following effects, among others:

a. Competition in the primary care physician services market in Nampa, and the general acute-care services and outpatient surgery services markets in the Boise Area would be substantially lessened;

b. Prices in those markets would likely increase to levels above those that would prevail absent the merger;

c. Patient choice would be substantially reduced; and

d. Saint Alphonsus Nampa, TVH, Saint Alphonsus Boise and Saint Alphonsus would suffer irreparable injury.

ANSWER: St. Luke's denies the allegations of Paragraph 133.

134. This violation, the anticompetitive effects and irreparable harm will continue unless enjoined.

ANSWER: St. Luke's denies the allegations of Paragraph 134.

COUNT II

THREATENED VIOLATION OF SECTION 1 OF THE SHERMAN ACT

135. Saint Alphonsus and TVH restate and reallege the allegations of paragraphs 1 – 134 above hereof, as if fully restated herein.

ANSWER: St. Luke's incorporates its answers to all preceding paragraphs as if fully restated herein.

136. St. Luke's intends to acquire Saltzer.

ANSWER: St. Luke's admits that it has entered into an affiliation with Saltzer, but denies the allegations of Paragraph 136.

137. This acquisition is to be effectuated by contracts, combinations and conspiracies that are unlawful under Section 1 of the Sherman Act (15 U.S.C. § 1).

ANSWER: The allegations of Paragraph 137 purport to state a legal conclusion to which an answer is not required. To the extent an answer is required, St. Luke's denies the allegations of Paragraph 137.

138. This acquisition will cause substantial anticompetitive effects as described above.

ANSWER: St. Luke's denies the allegations of Paragraph 138.

139. This acquisition will unreasonably restrain trade in violation of Section 1 of the Sherman Act.

ANSWER: The allegations of Paragraph 139 purport to state a legal conclusion to which an answer is not required. To the extent an answer is required, St. Luke's denies the allegations of Paragraph 139.

140. As a direct and proximate result of St. Luke's violations of Section 1 of the Sherman Act, Saint Alphonsus Nampa, TVH, Saint Alphonsus Boise and Saint Alphonsus will suffer irreparable harm.

ANSWER: The allegations of Paragraph 140 purport to state a legal conclusion to which an answer is not required. To the extent an answer is required, St. Luke's denies the allegations of Paragraph 140.

141. This violation, the anticompetitive effects and irreparable harm will continue unless enjoined.

ANSWER: St. Luke's denies the allegations of Paragraph 141.

COUNT III

THREATENED VIOLATION OF SECTION 48-106 OF THE IDAHO CODE

142. Saint Alphonsus and TVH restate and reallege the allegations of paragraphs 1 – 141 above hereof, as if fully restated herein.

ANSWER: St. Luke's incorporates its answers to all preceding paragraphs as if fully restated herein.

143. The effect of the proposed acquisition of Saltzer by St. Luke's would be to lessen competition substantially in Idaho in violation of Section 48-106 of the Idaho Code.

ANSWER: The allegations of Paragraph 143 purport to state a legal conclusion to which an answer is not required. To the extent an answer is required, St. Luke's denies the allegations of Paragraph 143.

144. The transaction would likely have the following effects, among others:

a. Competition in the primary care physician services market in Nampa, and the general acute-care services and outpatient surgery services markets in the Boise Area would be substantially lessened;

b. Prices in those markets would likely increase to levels above those that would prevail absent the merger;

c. Patient choice would be substantially reduced; and

d. Saint Alphonsus Nampa, TVH, Saint Alphonsus Boise and Saint Alphonsus would suffer irreparable injury.

ANSWER: St. Luke's denies the allegations of Paragraph 144.

145. This violation, the anticompetitive effects and irreparable harm will continue unless enjoined.

ANSWER: St. Luke's denies that the Saltzer transaction involves any violation of law and further denies the remaining allegations of Paragraph 145.

COUNT IV

THREATENED VIOLATION OF SECTION 48-104 OF THE IDAHO CODE

146. Saint Alphonsus and TVH restate and reallege the allegations of paragraphs 1 – 145 above hereof, as if fully restated herein.

ANSWER: St. Luke's incorporates its answers to all preceding paragraphs as if fully restated herein.

147. St. Luke's intends to acquire Saltzer.

ANSWER: St. Luke's admits that it has entered into an affiliation with Saltzer, but denies the allegations of Paragraph 147.

148. This acquisition is to be effectuated by contracts, combinations and conspiracies that are unlawful under Section 48-104 of the Idaho Code.

ANSWER: The allegations of Paragraph 148 purport to state a legal conclusion to which an answer is not required. To the extent an answer is required, St. Luke's denies the allegations of Paragraph 148.

149. This acquisition will cause substantial anticompetitive effects.

ANSWER: St. Luke's denies the allegations of Paragraph 149.

150. This acquisition will unreasonably restrain trade in violation of Section 48-104 of the Idaho Code.

ANSWER: The allegations of Paragraph 150 purport to state a legal conclusion to which an answer is not required. To the extent an answer is required, St. Luke's denies the allegations of Paragraph 150.

151. As a direct and proximate result of St. Luke's violations of Section 48-104 of the Idaho Code, Saint Alphonsus Nampa, TVH, Saint Alphonsus Boise and Saint Alphonsus will suffer irreparable harm.

ANSWER: The allegations of Paragraph 151 purport to state a legal conclusion to which an answer is not required. To the extent an answer is required, St. Luke's denies the allegations of Paragraph 151.

152. This violation, the anticompetitive effects and irreparable harm will continue unless enjoined.

ANSWER: St. Luke's denies that the Saltzer transaction involves any violation of law and further denies the remaining allegations of Paragraph 152.

RELIEF REQUESTED

153. WHEREFORE, Saint Alphonsus Health System, Inc., Saint Alphonsus Regional Medical Center, Inc., Saint Alphonsus Medical Center - Nampa, Inc. and Treasure Valley Hospital Limited Partnership pray this Court to grant the following relief:

A. Preliminarily and permanently enjoin St. Luke's from acquiring Saltzer;

B. Require St. Luke's to fully divest Saltzer and all its assets;

C. Award Saint Alphonsus, TVH, Saint Alphonsus Boise and Saint Alphonsus three times any damages suffered pending divestiture, as well their reasonable attorneys' fees against St. Luke's; and

D. Award such other relief as this Court finds just.

ANSWER: St. Luke's admits that Paragraph 153 describes plaintiffs' prayer for relief, but denies that the Complaint states a claim and that plaintiffs are entitled to any relief whatsoever.

AFFIRMATIVE DEFENSES

1. Plaintiffs, as competitors of St. Luke's, lack standing to complain of higher prices allegedly resulting from the Saltzer transaction or any other harm to payers arising from that transaction.

2. Plaintiffs are barred from maintaining this action by their unclean hands. Indeed, Saint Alphonsus has sought to acquire Saltzer on at least two occasions. Moreover, if successful in having the Saltzer transaction enjoined, Saint Alphonsus will employ many Saltzer physicians and will thereby pose a far greater threat to competition than is posed by the Saltzer transaction. Saint Alphonsus has sought to engage in significant anticompetitive conduct that should preclude any relief in this case.

3. St. Luke's Health System, Ltd. is not properly named as a defendant in this case because it did not acquire any of Saltzer's assets.

DATED: January 22, 2013.

STOEL RIVES LLP

s/ J. Walter Sinclair
J. Walter Sinclair

Jack R. Bierig *(admitted pro hac vice)*
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Attorneys for St. Luke's Health System, Ltd.
and St. Luke's Regional Medical Center, Ltd.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 22, 2013, I filed the foregoing **ANSWER TO AMENDED COMPLAINT FOR PRELIMINARY AND PERMANENT INJUNCTION AND DAMAGES** electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected in the Notice of Electronic Filing:

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By:_/s/ J. Walter Sinclair_____
J. Walter Sinclair