Keely E. Duke
ISB 6044; ked@dukescanlan.com
Duke Scanlan & Hall, PLLC
1087 W. River Street, Suite 300
Boise, ID 83707
Telephone (208) 342-3310

David A. Ettinger
dettinger@honigman.com
Lara Fetsco Phillip
lara.phillip@honigman.com
Honigman Miller Schwartz and Cohn LLP
660 Woodward Avenue
Detroit, MI 48226
Telephone: (313) 465-7368

Attorneys for Saint Alphonsus Medical Center-Nampa, Inc., Saint Alphonsus Health System, Inc. and Saint Alphonsus Regional Medical Center, Inc.

Raymond D. Powers
rdp@powerstolman.com
Portia L. Rauer
plr@powerstolman.com
Powers Tolman Farley PLLC
345 Bobwhite Ct., 150
Boise, ID 83706
Tel: 208-577-5100

Attorneys for Plaintiff Treasure Valley Hospital Limited Partnership

UNITED STATES DISTRICT COURT

IN 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 (Lead) **PRIVATE PLAINTIFFS' REPLY MEMORANDUM ON ENTITLEMENT TO ATTORNEYS' FEES AND COSTS**

I. INTRODUCTION

St. Luke's argument that the Private Plaintiffs are not entitled to their attorneys' fees is based on false factual and legal premises. St. Luke's relies critically on:

(1) A Supreme Court case, *Buckhannon Bd. & Care Home, Inc. v. West Virginia Dep't of Health*, 532 U.S. 598 (2001), which states only that a *voluntary* cessation of actions by a defendant cannot justify the award of attorneys' fees; and

(2) The false statement (repeated 17 times in its brief) that the Private Plaintiffs did not obtain a judgment here.

St. Luke's (implicitly) argues that a party cannot prevail unless it obtains, not only a judgment, but findings by the court on all necessary elements of its claims. However, the Private Plaintiffs have achieved this result. Even more importantly, St. Luke's has cited absolutely no legal authority to support this proposition. As explained below, the law is clearly to the contrary.

St. Luke's never disputes that the Private Plaintiffs made substantial and meaningful contributions to the ultimate outcome of divestiture in this case. Nor does it claim that this Court found against the Private Plaintiffs on any element of their claims. St. Luke's argument is that, because this Court *did not need* to address certain elements of the Private Plaintiffs' claims, that somehow disqualifies them from receiving their attorneys' fees.

In essence, St. Luke's argues that the Private Plaintiffs should be penalized because they were *too successful*. Because the Private Plaintiffs, along with the Government Plaintiffs, were able to prove their combined claims, making it unnecessary for the Court to reach the Private Plaintiffs' other claims, according to St. Luke's, that means that they did not "prevail," and should be penalized for it. That makes no sense, and no court has ever suggested such a result.

In fact, the only case addressing facts remotely similar to those that St. Luke's (inaccurately) posits stated that St. Luke's argument "borders on the absurd."

II. PRIVATE PLAINTIFFS OBTAINED AN ENFORCEABLE JUDGMENT

St. Luke's brief states **17 times** that Private Plaintiffs failed to obtain an "enforceable judgment." But incessant repetition does not make this false statement any more accurate. In fact, this Court stated in its Findings of Fact and Conclusions of Law [Dkt. 464] at p.1 that "the Court finds **for the Plaintiffs** and will order divestiture . . .." The Court's Memorandum Decision and Order [Dkt. 463] states in the second sentence that "the Court finds **for the Plaintiffs** and will order divestiture . . .." The Judgment [Dkt. 471] provides that "St. Luke's acquisition of the Saltzer Medical Group violates Section 7 of the Clayton Act and the Idaho Competition Act", precisely the relief sought by the Private Plaintiffs.

None of these statements, and none of the Court's orders and judgments, attributes the relief to only the Government Plaintiffs or suggests in any way that the judgment was not awarded to the Private Plaintiffs as well. Every statement refers to all the Plaintiffs. Indeed, the Judgment, Memorandum Decision and Order, and Findings of Fact and Conclusions of Law were all issued under the caption of the "lead case", Case No. 1:12-CV-00560, brought by the **Private Plaintiffs**. There is no possible way to accurately assert that the Private Plaintiffs failed to obtain a judgment here.

For that reason alone, the Private Plaintiffs have prevailed and are entitled to their reasonable attorneys' fees.[1]

[1] St. Luke's alleges that a judgment obtained by all plaintiffs is not sufficient to justify the award of attorneys' fees to the Private Plaintiffs, but its cases do not support its position. In both *Naucke v. City of Park Hills*, 284 F.3d 923, 928-29 (8th Cir. 2002) and *Odneal v. Pierce*, No. C-04-454, 2011 WL 2678940, at *6 (S.D. Tex. July 7, 2011), the district courts had dismissed

III. ***BUCKHANNON*** **AND OTHER SUPREME COURT AUTHORITY SUPPORT THE CONCLUSION THAT THE PRIVATE PLAINTIFFS ARE PREVAILING PARTIES**

St. Luke's reliance on *Buckhannon*, supra, does not in any way salvage its argument. Indeed, *Buckhannon* and the other relevant Supreme Court and circuit court decisions establish that efforts contributing to a change in the legal relationship between the parties are sufficient to entitle a plaintiff to attorneys' fees.

Buckhannon stands for the proposition that, and only that, a plaintiff cannot recover attorneys' fees as the "prevailing party" where *no relief* was ordered by the court, and the defendant voluntarily ceased the challenged activity. The Supreme Court merely concluded that "a 'prevailing party' is one who has been awarded some relief by the court . . ." 532 U.S. at 603. The court rejected the "catalyst theory," which, contrary to St. Luke's characterization, merely "allows an award where there is no judicially sanctioned change in the legal relationship of the parties." *Id.* at 605.

Indeed, the *Buckhannon* court noted that a party can prevail simply by reaching a settlement enforced through a consent decree. *Id.* at 604. This conclusion is dispositive here, even under St Luke's erroneous characterization of the facts. A consent decree changes the legal relationship between the parties, and grants at least some desired relief, but there is no finding that the plaintiff has proven all the elements of its claim. This is precisely what, according to St Luke's, has occurred here. Yet *Buckhannon* supports the award of attorneys' fees under these facts.

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plaintiffs' claims. In *Stewart v. Hanson*, 675 F.2d 846, 848 (7th Cir. 1982), contrary to St. Luke's assertion, the Seventh Circuit held that "the district court was in error in finding that [plaintiff] was not 'a person aggrieved' within the meaning of the statute." *Id*. at 850.

Buckhannon does not in any way endorse, invoke or otherwise address the approach taken by St. Luke's in its brief; to parse individual elements of the claims, and determine if all of them were addressed by the Court. *Buckhannon* focuses only on a judgment or other court ordered change in the parties' relationships, something that is certainly present here.[2]

The Ninth Circuit has "rejected overly narrow interpretations of Buckhannon…" *Carbonell v INS*, 429 F.3d 894, 898 (9th Cir. 2005). For example, "[w]e have held that a litigant can be a prevailing party even if he has not obtained affirmative relief in his underlying action." *Id*. at 900.[3]

In *Hensley v. Eckerhardt*, 461 U.S. 424 (1983), the Supreme Court made clear that St. Luke's parsing is improper. *Hensley* states that a "prevailing party" need only "succeed on *any significant issue* in litigation which receives *some of the benefit* the party sought in bringing suit." 461 U.S. at 433 (emphasis added). Certainly, this standard (which was contained in the Private Plaintiffs' initial brief, and which St. Luke's never disputes) was easily met by the Private Plaintiffs here.

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[2] St. Luke's attempts to distinguish the only antitrust cases addressing combined efforts by private and government plaintiffs, see Private Plaintiffs' initial Memorandum on Entitlement to Attorneys' Fees and Costs at 4-6, because they are pre *Buckhannon*. However, since *Buckhannon* does not support the expansive misinterpretation given it by St. Luke's, that argument is irrelevant. These cases provide further strong grounds for the award of attorneys' fees here.

[3] In *Carbonell*, the private plaintiffs had obtained a stipulation on a material issue. The Ninth Circuit stated that "by incorporating the voluntary stipulation into its order, the district court stamped it with the requisite 'judicial imprimatur.'" *Id*. at 901. Under this reasoning, the actions that Private Plaintiffs took in successfully procuring Defendants' representations that St. Luke's would not integrate operations, which were incorporated in the Court's December 12, 2012 Order, had sufficient judicial imprimatur to support the Private Plaintiffs' entitlement to attorney fees. See Plaintiffs' Memorandum on Entitlement to Attorneys' Fees and Costs at 9-12.

The Supreme Court in *Hensley* went on to determine what was necessary to satisfy the *more demanding* standard of what constituted a reasonable attorneys' fee. In connection with that issue, the court addressed what the standard should be where plaintiff "succeeded on only some of his claims for relief." The court noted that where, as here, multiple claims may be based upon "a common core of facts" or "related legal theories", "[s]uch a lawsuit cannot be viewed as a series of discrete claims. Instead, the district court should focus on the significance of the *overall relief* obtained by the plaintiff . . .." 461 U.S. at 435 (emphasis added). The court added that the "fee award should not be reduced simply because the plaintiff failed to prevail on every contention raised in the lawsuit . . . litigants in good faith may raise alternative legal grounds for a desired outcome, and the court's rejection of or failure to reach certain grounds is not a sufficient reason for reducing a fee. *The result is what matters*." *Id.* (emphasis added).

Here, as well, "the result is what matters." It is undisputed that the Private Plaintiffs played an important role in obtaining the result in this case. Under the prevailing Supreme Court authority, they have prevailed. They are entitled to attorneys' fees.

Both the Ninth Circuit and this Court have reached the same conclusion, ruling that a party need not even prevail on the claims for which fees are available in order to recover, as long as a judgment has been obtained. See *Gerling Global Reinsurance Corp. of America v. Garamendi*, 400 F.3d 803, 806, 809-10 (9th Cir. 2005) (holding that "[s]o long as an unaddressed, fee-supporting claim meets the substantiality test and the end result of the litigation grants a plaintiff his desired relief, the unaddressed claim may support a fee award regardless of the decision of the court below"); *Alliance for Property Rights and Fiscal Responsibility v. City of Idaho Falls*, No. 4:12-cv-146-BLW, 2013 WL 551028 at *2 (D. Id. Feb. 12, 2013) (holding

that "plaintiffs may still be viewed as prevailing parties under [a] fee statute" even when "the Court did not directly resolve plaintiff's [fee-generating] claim").

St. Luke's has cited no cases addressing its (falsely) alleged facts: a judgment is obtained, but not by the party seeking attorneys' fees, though that party substantially contributed to the judgment.[4] In fact, there is such a case, and it was decided completely contrary to St. Luke's position. In *Sierra Club v. Hamilton County Bd. of County Comm'rs*, 504 F.3d 634 (6th Cir. 2007), the Sixth Circuit addressed a request for attorneys' fees by the Sierra Club in a case it brought, which was then consolidated with a case later filed by the United States. The government and the defendant then entered into a consent decree, which was not signed by the Sierra Club. The Sierra Club nevertheless participated vigorously in the negotiation of, and advocacy concerning, the consent decree. *Id*. at 644-45.

The Sixth Circuit held that the Sierra Club was a prevailing party, and was entitled to attorneys' fees. The court rejected the applicability of the "catalyst" theory, pursuant to *Buckhannon, supra*. However, the court said that the argument that the Sierra Club could not obtain fees because it was "not a party to [the] decree," "borders on the absurd," because of the Sierra Club's key role in obtaining the consent decree. 504 F.3d at 643-644.

The Sixth Circuit's reasoning in *Sierra Club* is directly applicable here. There is no dispute that the Private Plaintiffs substantially contributed to the favorable outcome in this case. Under the circumstances, *even if* (contrary to the facts in this case) the Private Plaintiffs had not obtained a judgment, they would clearly be entitled to attorneys' fees. In the language of

[4] In both *Citizens For Better Forestry v. U.S. Dept. of Agric.*, 567 F.3d 1128 (9th Cir. 2009) and *J.C. v. Regional School Dist. 10*, 278 F.3d 119 (2nd Cir. 2002), cited by St. Luke's, the court did not award any relief at all.

Buckhannon, there was a "material alteration of the legal relationship" here. That is more than sufficient to justify the award of attorneys' fees.

IV. EVEN UNDER ST. LUKE'S THEORY, THE PRIVATE PLAINTIFFS ARE PREVAILING PARTIES

Even under St. Luke's mistaken view of the law, the Private Plaintiffs are prevailing parties. St. Luke's does not dispute that the Court's Findings directly track the allegations in the Private Plaintiffs' amended complaint. See Private Plaintiffs' Brief in Support of Entitlement [Dkt. 487] at 8-9. St. Luke's claims that one element of the Court's analysis – its references to concerns about higher prices – means that the Private Plaintiffs have not prevailed, because the Private Plaintiffs cannot claim antitrust injury from high prices. But its argument ignores important elements of this Court's Findings, as well as the Court's earlier ruling on St. Luke's (in relevant part) *unsuccessful* motion for partial summary judgment.

St. Luke's argues that the Court found the acquisition of Saltzer illegal *only* because of its likely impact on prices. That is both untrue and irrelevant. It is untrue because St. Luke's ignores an entire section of the Court's Findings under "Anticompetitive Effects" addressing the issue of shifting referrals. See Findings of Fact and Conclusions of Law ¶¶ 132-140. The Court clearly found for the Private Plaintiffs on this element. See, e.g. Finding of Fact ¶ 140 ("After the acquisition, it is virtually certain that this trend will continue and Saltzer referrals to St. Luke's will increase.") St. Luke's does not dispute that the Private Plaintiffs can claim antitrust injury from the threat of loss of referrals.

St. Luke's argument is also irrelevant since the Court's Findings that prices will rise do establish harm to the Private Plaintiffs. As the Private Plaintiffs successfully argued in opposing

St. Luke's Motion for Partial Summary Judgment, a price increase reflects the creation or enhancement of market power, which can also be used to exclude competition:

> To pursue their claim under §1 of the Sherman Act, the private plaintiffs must show, among other things, that St. Luke's will have sufficient market power to control prices or exclude competition. *See Paladin Associates, Inc. v. Montana Power Co.*, 328 F.3d 1145, 1158 (9th Cir. 2003) (affirming dismissal of claim under §1 of the Sherman Act where plaintiffs produced no evidence that defendant had "the power to control prices or exclude competition"). St. Luke's ability to control prices has direct relevance to its market power, a crucial element of St. Al's claims under §1 of the Sherman Act.

September 24, 2013 Memorandum Decision and Order on St. Luke's Motion for Partial Summary Judgment [Dkt. 230] at 3.

This is confirmed by the Court's Findings and Conclusions. The Court noted on several occasions that the transaction would give St. Luke's greater "bargaining leverage." Findings of Fact and Conclusions of Law at ¶¶ 98, 113-115, 144. As Private Plaintiffs have successfully argued in opposing St. Luke's summary judgment motion, that leverage can be used to exclude them as well as to raise price. *See e.g.* Memorandum in Opposition to St. Luke's Motion for Partial Summary Judgment [Dkt. 151] at 15 ("That negotiating advantage . . . can also lead to exclusion, if St. Luke's demands greater volume at the expense of its rivals in order for payors or employers to access its critical providers."). St. Luke's effort to reargue its unsuccessful summary judgment motion is completely inadequate.

V. THE PRIVATE PLAINTIFFS SUBSTANTAILLY PREVAILED IN THIS CASE

At the very least, the Private Plaintiffs have *substantially* prevailed. They obtained the relief they sought. The Court found in support of one of their claims on relevant geographic

market, product market, prima facie case, likelihood of competitive impact and on St. Luke's failure to rebut the prima facie case.

St Luke's argues that the term "substantially prevails" as used in Section 16 of the Clayton Act, 15 USC §26, means the same thing as "prevails." This ignores the legislative history of the statute.

The legislative history of the amendment to 15 U.S.C § 26 sets forth the reason why there is a lesser ("substantially prevailing") standard to obtain attorneys' fees for antitrust injunction actions when damages actions provide that only a "prevailing party" may obtain attorneys' fees. *State of Minnesota v. U.S. Steel Corp*., 44 F.R.D. 559, 577 (D. Minn. 1968). The antitrust laws provide a special incentive, over and above attorneys' fees, to encourage "private attorneys general" who seek damages: the availability of trebling. But there are no treble damages available to a party bringing an injunction action. Under the circumstances, a more lenient standard for the award of attorneys' fees was deemed necessary. H.R. Rep. No. 94-499, 94th Cong., 2d Sess., reprinted in (1976) U.S.Code Cong. & Ad.News 2572, 2589 (discussing the greater "need for awarding attorneys' fees in § 16 injunction cases . . . than . . . in § 4 treble damages cases.").[5]

The conclusion that Private Plaintiffs have substantially prevailed here is completely consistent with the Ninth Circuit case law. *Synagogue v. United States*, 482 F.3d 1058 (9th Cir. 2007), cited by St. Luke's, held that a party "substantially prevails" when there is an "alteration

[5] As the House Report explains, "[i]n damage cases, a prevailing plaintiff recovers compensation, at least. In injunction cases, however, without the shifting of attorneys' fees, a plaintiff with a deserving case would personally have to pay the very high price of obtaining judicial enforcement of the law and of the important national policies the antitrust laws reflect." *Id*. at p. 2589.

in the legal relationship between the parties" that "bears a judicial *imprimatur*." *Id*. at 1063. As discussed above, that is undisputedly true here.[6]

St. Luke's other cases are not to the contrary. *Oil, Chem, & Atomic Workers Int'l Union, AFL-CIO v. Dep't of Energy*, 288 F.3d 452, 455 (D.C. Cir. 2002), is no longer good law and has been superseded by statute. In *Pres. Coal of Erie Cnty. v. Fed. Transit Admin*., 356 F.3d 444, 450 n.3 (2d Cir. 2004), the Second Circuit held that "Buckhannon does not limit fee awards to enforceable judgments on the merits or to consent decrees."

For all these reasons, the Private Plaintiffs are entitled to their reasonable attorneys' fees.

DATED this 30th day of April, 2014.

DUKE SCANLAN & HALL, PLLC

By: /s/ Keely E. Duke

Duke Scanlan & Hall, PLLC
1087 W. River Street, Suite 300
Boise, ID 83707
Telephone (208) 342-3310
ked@dukescanlan.com

David A. Ettinger
Lara Fetsco Phillip
Honigman Miller Schwartz and Cohn LLP
660 Woodward Avenue
Detroit, MI 48226
Telephone: (313) 465-7368
dettinger@honigman.com
lara.phillip@honigman.com

Attorneys for Saint Alphonsus Medical Center-Nampa, Inc., Saint Alphonsus Health System, Inc., and Saint Alphonsus Regional Medical Center, Inc.

/s/Raymond D. Powers
Raymond D. Powers
Portia L. Rauer
Powers Tolman Farley PLLC
345 Bobwhite Ct., #150
Boise, ID 83706
Tel: 208-577-5100
rdp@powerstolman.com
plr@powerstolman.com

Counsel for Plaintiff Treasure Valley Hospital Limited Partnership

[6] *Costco Wholesale Corp. v. Hoen*, 538 F.3d 1128, 1138 (9th Cir. 2008) cited by St. Luke's, does not compare the formulations for "prevail" and "substantially."

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of April, 2014, I electronically filed the foregoing document with the U.S. District Court. Notice will automatically be electronically mailed to the following individuals who are registered with the U.S. District Court CM/ECF System.

Ben J Keith bkeith@sidley.com, krockwell@sidley.com
Brett T DeLange brett.delange@ag.idaho.gov, teresa.taylor@ag.idaho.gov
Brian K Julian bjulian@ajhlaw.com, lgrantham@ajhlaw.com, pgrossman@ajhlaw.com
Bryan A Nickels ban@dukescanlan.com, klb@dukescanlan.com, klm@dukescanlan.com, sls@dukescanlan.com
Carl J Withroe carl.withroe@ag.idaho.gov, colleen.funk@ag.idaho.gov
Charles K Schafer cschafer@sidley.com
Colleen D Zahn colleen.zahn@ag.idaho.gov, reta.massano@ag.idaho.gov
Danica Noble dnoble@ftc.gov
David A Ettinger dettinger@honigman.com, nroberts@honigman.com, shakim@honigman.com
Douglas Eugene Litvack dlitvack@ftc.gov, abeilein@ftc.gov
Eric J Wilson ewilson@gklaw.com
Henry Chao-Lon Su hsu@ftc.gov, lrine@ftc.gov, ssajewski@ftc.gov
J Walter Sinclair JWSinclair@hollandhart.com njhammond@hollandhart.com
Jack R Bierig jbierig@sidley.com
Keely E. Duke ked@dukescanlan.com, klb@dukescanlan.com, sls@dukescanlan.com
Kevin J O'Connor koconnor@gklaw.com
Kevin J Scanlan kjs@dukescanlan.com, klb@dukescanlan.com, klm@dukescanlan.com
Lara Fetsco Phillip lara.phillip@honigman.com
Matthew Paul Accornero maccornero@ftc.gov
Michael James Perry mperry@ftc.gov
Peter C Herrick pherrick@ftc.gov
Portia L Rauer plr@powerstolman.com, jsm@powerstolman.com
Raymond D Powers rdp@powerstolman.com, crb@powerstolman.com, jls@powerstolman.com
Robert J Schroeder rschroeder@ftc.gov
Scott D Stein sstein@sidley.com, efilingnotice@sidley.com, jfitzpat@sidley.com, jfitzpatrick@sidley.com
Syrena Case Hargrove Syrena.Hargrove@usdoj.gov, angela.nyland@usdoj.gov, becky.early@usdoj.gov, pamela.bearg@usdoj.gov, USAID.ECFNOTICE@USDOJ.GOV
Tacy F Flint tflint@sidley.com
Wendy K Arends warends@gklaw.com, jschwartz@gklaw.com, swilson@gklaw.com
Thomas Greene tgreene2@ftc.gov

/s/ Keely E. Duke
Keely E. Duke