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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.

FEDERAL TRADE COMMISSION; STATE
OF IDAHO

Plaintiffs,

v.

ST. LUKE'S HEALTH SYSTEM, LTD.;
SALTZER MEDICAL GROUP, P.A.

Defendants

Case No. 1:12-cv-00560-BLW (Lead Case)

**MEMORANDUM IN SUPPORT OF
DEFENDANTS' MOTION FOR LEAVE
TO FILE SUR-REPLY BRIEF IN REPLY
TO PRIVATE PLAINTIFFS' REPLY
MEMORANDUM ON ENTITLEMENT
TO ATTORNEYS' FEES AND COSTS**

(Docket Nos. 487, 499)

Filed on 3/26/14 and 4/30/14

Case No. 1:13-cv-00116-BLW

Defendants St. Luke's Health System, Ltd. and St. Luke's Regional Medical Center, Ltd ("St. Luke's") respectfully move for leave to file the accompanying Sur-Reply Brief addressing Private Plaintiffs Reply Memorandum on Entitlement to Attorneys' Fees and Costs. In support of this motion, St. Luke's states as follows:

1. This Court has discretion to grant St. Luke's leave to file a sur-reply brief to address new issues raised in private plaintiffs' Reply. See *Christian v. Mattel, Inc.*, 286 F.3d 1118, 1129 (9th Cir. 2002) (holding court has "considerable latitude in managing the parties' motion practice and enforcing local rules that place parameters on briefing"); *Zhu v. Countrywide Realty Co., Inc.*, 160 F.Supp.2d 1210 (D. Kan. 2001).

2. Pursuant to a briefing schedule approved by the Court (Docket No. 486), private plaintiffs filed their Memorandum on Entitlement to Fees and Costs ("Memorandum") on March 26, 2014 (Docket No. 487); St. Luke's filed its Opposition to the Memorandum on April 16, 2014 (Docket No. 497); and private plaintiffs' filed their Reply on April 30, 2014 (Docket No. 499).

3. In their Reply, the private plaintiffs argued for the first time that they are substantially prevailing parties under the standard set forth by the Supreme Court in *Buckhannon Board and Care Home, Inc. v. West Virginia Department of Health and Human Services*, 532 U.S. 598, 603-06 (2001). See Docket No. 499. In *Buckhannon*, the Supreme Court recognized a new standard to constitute a prevailing or substantially prevailing party for purposes of collecting attorney's fees and reasonable costs. See, e.g., *Bennett v. Yoshina*, 259 F.3d 1097 (9th Cir. 2001) (recognizing that the *Buckhannon* decision announced a "new rule" to qualify as a prevailing party).

4. The private plaintiffs did not address entitlement to fees under the *Buckhannon* standard in their initial Memorandum. *See* Docket No. 487. To the contrary, they relied entirely on pre-*Buckhannon* cases, applying the prior standard, to support their claimed entitlement to attorney's fees and costs. *See Id.*

5. Asserting for the first time in their Reply Brief that they prevailed under the standard set forth in *Buckhannon*, the private plaintiffs introduced new arguments and case law to which St. Luke's has had no opportunity to respond.

6. Fairness requires that St. Luke's be given the opportunity to respond to these arguments and case law.

WHEREFORE, St. Luke's respectfully request that the Court enter an Order granting permission to St. Luke's to submit its Sur-Reply in Reply to Private Plaintiffs' Reply Memorandum on Entitlement to Attorneys' Fees and Costs.

DATED: May 5, 2014.

HOLLAND & HART LLP

/s/ J. Walter Sinclair

J. Walter Sinclair

SIDLEY AUSTIN, LLP

Jack R. Bierig (*admitted pro hac vice*)

Scott D. Stein (*admitted pro hac vice*)

Tacy F. Flint (*admitted pro hac vice*)

Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 5, 2014, I filed the foregoing **MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION FOR LEAVE TO FILE SUR-REPLY BRIEF IN REPLY TO PRIVATE PLAINTIFFS' REPLY MEMORANDUM ON ENTITLEMENT TO ATTORNEYS' FEES AND COSTS** 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
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