

J. Walter Sinclair, ISB #2243
Email: jwsinclair@stoel.com
STOEL RIVES, LLP
101 S. Capitol Blvd, Ste 1900
Boise, ID 83702
Telephone: (208) 389-9000
Facsimile: (208) 389-9040

Attorneys for Defendant
St. Luke's Health System, Ltd.

Jack R. Bierig (*admitted pro hac vice*)
Email: jbierig@sidley.com
Tacy F. Flint (*admitted pro hac vice*)
Email: tflint@sidley.com
Ben Keith (*admitted pro hac vice*)
Email: bkeith@sidley.com
SIDLEY AUSTIN, LLP
One South Dearborn
Chicago, IL 60603
Telephone: (312) 853-7000
Facsimile: (312) 853-7036

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,

Defendant.

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

**STATEMENT OF MATERIAL FACTS
FOR MEMORANDUM IN
OPPOSITION TO PLAINTIFFS'
MOTION FOR PRELIMINARY
INJUNCTION**

STATEMENT OF FACTS

I. PARTIES AND INVOLVED ENTITIES.

1. Defendant St. Luke's Health System, Ltd. ("St. Luke's") is the only Idaho-based, not-for-profit health system. Declaration of David C. Pate, M.D. ("Pate Decl.") ¶ 3. St. Luke's operates facilities in the Treasure Valley and Magic Valley regions. In the Treasure Valley, St. Luke's operates St. Luke's Regional Medical Center, a 400-plus bed tertiary medical center in downtown Boise; St. Luke's Children's Hospital, Idaho's only children's hospital; St. Luke's Meridian Medical Center, a 167-bed hospital in the city of Meridian; an accredited Chest Pain Center and Level II and IIIB neonatal intensive care units; St. Luke's McCall, a 15-bed critical access hospital located in McCall; and the Mountain States Tumor Institute ("MSTI"), with Treasure Valley locations in Boise, Meridian, Nampa, and Fruitland. *Id.* In the Magic Valley, St. Luke's operates the 228-bed St. Luke's Magic Valley Regional Medical Center in Twin Falls; an MSTI cancer treatment center in Twin Falls; and two 25-bed critical access hospitals, the Wood River Medical Center in Ketchum and St. Luke's Jerome located in Jerome. *Id.* ¶ 4.

2. Non-party Saltzer Medical Group ("Saltzer") is an independent physician group that includes predominantly primary care physicians, as well as specialty and subspecialty physicians and surgeons. Declaration of John Kaiser, M.D. ("Kaiser Decl.") ¶ 5. Saltzer physicians work in clinics in Nampa, Meridian, and Caldwell. *Id.* ¶ 2. A substantial percentage of the patients treated at Saltzer's Nampa clinic come from Caldwell and other areas even farther outside of Nampa. Declaration of David Argue ("Argue Decl.") ¶ 34. Similarly, the patients treated at Saltzer's Caldwell clinic come from Nampa and other areas equally far. *Id.* at 40.

3. Plaintiffs Saint Alphonsus Medical Center – Nampa, Inc. ("Saint Alphonsus – Nampa") and Saint Alphonsus Regional Medical Center, Inc. ("SARMC") are two hospitals contained within plaintiff Saint Alphonsus Health System, Inc., which contains two additional

hospitals and is headquartered in Boise, Idaho. Pl. SOF, Dkt. 22-10, ¶ 7. The Saint Alphonsus Health System is part of the nationwide entity Trinity Health-Catholic Health Care System, the second largest non-profit health system in the country. Declaration of William Savage (“Savage Decl.”) ¶ 2. Plaintiff Treasure Valley Hospital Limited Partnership (“TVH”) is a physician-owned, for-profit, non-emergency hospital in Boise. Pl. SOF, Dkt. 22-10, ¶ 10.

II. ST. LUKE’S EFFORTS TO PROVIDE INTEGRATED HEALTH CARE

4. St. Luke’s is guided by the “Triple Aim” of improving the health of the populations that it serves, delivering better care for patients, and doing so at a lower cost. Pate Decl. ¶ 6. To realize these goals, St. Luke’s has focused efforts on transforming health care delivery by aligning providers to deliver integrated, seamless, and patient-centered quality care. *Id.* St. Luke’s vision depends on a substantial network of physicians, working together across all medical specialties to coordinate care and manage the health of a large, scattered population of patients, using the tools St. Luke’s can provide to develop practice protocols and systems that reflect best practices for improving the health and care of all St. Luke’s patients. *Id.* With an integrated network of physicians and a uniform electronic medical record system, St. Luke’s can more effectively manage the care of patients and reduce costs associated with overutilization and inappropriate provision of services. *Id.*

5. St. Luke’s goal of high quality, low cost care also depends on a transformation of the economic incentives that induce some physicians to prescribe and perform unnecessary tests and procedures, and to use overly expensive supplies and medications. Pate Decl. ¶ 7. St. Luke’s aims to transition to a pay-for-value model, under which St. Luke’s will transition into risk-based arrangements with commercial payers to receive a fixed amount for caring for a population of patients, regardless of the individual services provided, thereby creating incentives for physicians to focus on patient’s overall health and outcome. *Id.* ¶ 8. To convert to this

system, St. Luke's must recruit a critical mass of physicians to develop and lead the care processes and compensation models, and to service patients. *Id.*

6. To achieve these ends, St. Luke's has recently affiliated with or integrated physicians, practice groups, and health care facilities in southern Idaho. These affiliations have allowed St. Luke's to offer higher-quality, lower-cost care to patients in a variety of ways. *See* Pate Decl. ¶ 9; Declaration of Erik Heggland, M.D. ("Heggland Decl."); Declaration of Darby Webb, M.D. ("Webb Decl."); Declaration of Marshall Priest, M.D. ("Priest Decl."); Declaration of James Souza, M.D. ("Souza Decl."); Declaration of Bayo Crownson, M.D. ("Crownson Decl."); Declaration of Robert Ward, M.D. ("Ward Decl."); Declaration of Robert Walker, M.D. ("Walker Decl."); Declaration of Jonathan Schott, M.D. ("Schott Decl."). The successes achieved have given rise to a dramatic improvement in health outcomes across St. Luke's population. As of December 2011, the risk-adjusted mortality index for St. Luke's patients had decreased by 43% over the January 2010 rate. Declaration of John Kee ("Kee Decl.") ¶ 38. Over the same period, the risk-adjusted in-hospital complication index decreased by 69%. *Id.* ¶ 39. These improvements can only be attributed to St. Luke's work in partnership with newly integrated physicians to identify and implement best practices across the overall St. Luke's network. *Id.* ¶¶ 37-40.

7. Another innovation that St. Luke's has been able to implement as a result of its expansion is in the creation of a new set of insurance products with non-profit insurer SelectHealth. Kee Decl. ¶ 5; Declaration of Jeff Taylor ("Taylor Decl.") ¶ 17; Declaration of Patricia R. Richards ("Richards Decl.") ¶¶ 9-10. With the new SelectHealth products, the network of health care providers share in the risk and savings of paying for the cost of health care. Taylor Decl. ¶ 16. This creates an alignment of incentives for physicians, health care

networks, and insurers intended to optimize utilization for improved patient health at a lower cost. *Id.*; Richards Decl. ¶ 25.

8. Employing or entering Professional Services Agreement relationships with physicians, thus bringing them into the St. Luke's Clinic, is a critical component of achieving this mission and vision. Pate Decl. ¶ 10. This type of affiliation is necessary to provide physicians with economic security, to align their financial incentives so that they are able to see all patients regardless of ability to pay and regardless of their insurers' reimbursement rates, and to coordinate care without worry of violating the innumerable federal and state laws governing the relationships between physicians and hospitals. *Id.* It further aids in the coordination of care by creating a single integrated team of physicians and providers, with aligned financial incentives.

9. Affiliating with Saltzer is the necessary next step to achieving St. Luke's Triple Aim in Canyon County. The physicians in that group are committed to a uniform electronic medical record, the practicing of evidence-based medicine, clinically-integrated and patient-centered care, care coordination, management of care transitions, disease management, and to stringent quality and utilization review. By affiliating with St. Luke's, these physicians will have the resources to develop the infrastructure needed to clinically integrate care. St. Luke's will, in turn, have the physicians needed to be competitive in Canyon County. Pate Decl. ¶ 10. And St. Luke's will have the critical mass of physicians necessary to make the SelectHealth product commercially viable. Kee ¶ 26.

10. St. Luke's has never required any physician that it employs or with whom it has a professional services agreement to refer patients exclusively to St. Luke's. Kee Decl. ¶ 13; Webb Decl. ¶ 3; 8; Crownson Decl. ¶ 3; Declaration of Donald Kevin Stritzke ¶¶ 2-7. Nor has

St. Luke's prevented its physicians from maintaining privileges or admissions at other hospitals. Webb Decl. ¶ 3; Crownson Decl. ¶ 8. Nor does St. Luke's require its physicians to agree not to compete at the end of their contract in order to be employed with St. Luke's. Souza Decl. ¶ 5; Crownson Decl. ¶ 7; Walker Decl. ¶ 4.

11. To the contrary, St. Luke's expects that its physicians will make referrals however they determine best serves the needs of their patients. Souza Decl. ¶ 10; Crownson Decl. ¶ 3; Walker Decl. ¶ 3; Schott Decl. ¶ 10. In particular, St. Luke's has made clear that no Saltzer physician will be required or expected to refer patients to St. Luke's unless such a referral is in the patient's best interest. Souza Decl. ¶ 10; Crownson Decl. ¶ 3.

12. By contrast, Saint Alphonsus – Nampa does restrict physicians' ability to make referrals outside of the Saint Alphonsus Network. Crownson Decl. ¶ 2. Similarly, Saint Alphonsus – Nampa does not permit physicians employed by St. Luke's to take call at Saint Alphonsus, even if doing so would improve patient care. Webb Decl. ¶¶ 3-7. And Saint Alphonsus – Nampa imposes onerous non-compete conditions in its contracts with physicians. Souza Decl. ¶ 5; Crownson Decl. ¶ 7.

III. SALTZER'S DECISION TO AFFILIATE WITH ST. LUKE'S.

13. St. Luke's affiliation with Saltzer came about after Saltzer approached it in 2009. Savage Decl. ¶ 7, 10. Saltzer recognized that remaining unaffiliated would pose obstacles to its growth in terms of infrastructure, services offerings, and continuity of care. Declaration of Harold Kunz, M.D. ("Kunz Decl.") ¶¶ 2-3; Declaration of Thomas Patterson, M.D., ("Patterson Decl.") ¶¶ 2-3. It, therefore, began considering affiliation as early as 2005. Savage Decl. ¶ 2. At the time, it contemplated affiliation with Saint Al's. *Id.* ¶ 2.

14. After numerous unproductive conversations with Saint Al's, Kunz Decl. ¶ 7; Savage Decl. ¶¶ 3-5; Patterson Decl. ¶¶ 6-7; Declaration of Mark Rasmus, M.D., ("Rasmus

Decl.”) ¶¶ 5-6, Saltzer focused its attentions on St. Luke’s, with which it had enjoyed a largely positive working relationship. Kaiser Decl. ¶ 2; Savage Decl. ¶ 6; Kunz Decl. ¶ 5.

15. Saltzer’s discussions with St. Luke’s revealed both organizations’ shared goals for integrated, efficient patient care. Savage Decl. ¶ 7; Declaration of John Freeman, M.D. (“Freeman Decl.”) ¶ 7. As the conversation evolved, St. Luke’s made clear that its vision for its relationship with Saltzer did not preclude the latter from remaining an independent practice. Savage Decl. ¶ 7; Declaration of Randell Page, D.O. (“Page Decl.”) ¶ 9. Ultimately, St. Luke’s made Saltzer an offer for partnership, Savage Decl. ¶ 7—the transaction at issue in this litigation.

16. Before Saltzer voted on the offer, however, several of its physicians, each of whom held an interest in and received compensation from Treasure Valley Hospital, Page Decl. ¶ 10, insisted that Saltzer invite Saint Al’s to counteroffer St. Luke’s. Savage Decl. ¶ 8; Page Decl. ¶ 10. In January 2012, Saint Al’s submitted a proposal that differed in three major respects from St. Luke’s. First, Saint Al’s would provide no financial support for Saltzer to remain independent. Savage Decl. ¶ 8. Second, Saint Al’s proposal required that each physician’s individual contract contain a non-compete clause. Savage Decl. ¶ 9; Kunz Decl. ¶ 8; Patterson Decl. ¶ 7; Rasmus Decl. ¶ 6. Under the terms of the clause, any physician that chose to leave Saint Al’s could not, for two years after his departure, enter into a financial arrangement with St. Luke’s, any of its affiliates, or any hospital within 90 miles of Saint Al’s Regional Medical Center. Savage Decl. ¶ 9; Kunz Decl. ¶ 8; Patterson Decl. ¶ 7. Third, Saint Al’s wanted to renegotiate after one year the rate it would pay per patient treated. Kunz Decl. ¶ 10; Rasmus Decl. ¶ 6.

17. By contrast, St. Luke’s respected Saltzer’s desire to remain independent and provided the support that would enable it to do so. Declaration of Dr. Richard Aguilar, M.D.

(“Aguilar Decl.”) ¶ 8; Savage Decl. ¶ 10; Kunz Decl. ¶ 10. Furthermore, its proposed physician contracts did not contain a non-compete clause or restrictive covenant of any kind. Savage Decl. ¶ 9; Kunz Decl. ¶ 9; Patterson Decl. ¶ 7. Rather, a departing physician would simply have to return, on a pro rata basis, any “Workforce in Place” funds that he or she accepted at the close of the deal. Kunz Decl. ¶ 9; Patterson Decl. ¶ 7. Finally, St. Luke’s suggested a five-year term for patient rates. Kunz Decl. ¶ 10. Saltzer voted to partner with St. Luke’s. Savage Decl. ¶ 10; Kaiser Decl. ¶ 3; Kunz Decl. ¶ 10.

18. At the time of the negotiations, certain Saltzer physicians held ownership interests in Treasure Valley Hospital. Savage Decl. ¶ 11; Page ¶ 10. In an attempt to avoid the appearance or the actuality that a physician would refer a patient on the basis of financial incentive, and not the patient’s best interest, Salter and St. Luke’s negotiated physician contracts under which these physicians could select one of two options. Savage Decl. ¶ 11. The first option permitted them to hold their interest in Treasure Valley Hospital and receive a compensation package from St. Luke’s equal to what they were already making at Saltzer. *Id.* The second option required them to divest their interest in Treasure Valley Hospital, thereby entitling them to a salary package that matched both what they were earning at Saltzer and what they were earning from their ownership interest. *Id.* Neither these offers nor those made to any other Saltzer physician offered compensation—financial or otherwise—for patient referrals. Savage Decl. ¶ 12; Kunz Decl. ¶ 11; Patterson Decl. ¶ 11; Freeman Decl. ¶¶ 5-7; Kaiser Decl. ¶¶ 3-4; Page Decl. ¶¶ 11-12; Aguilar Decl. ¶¶ 5-7; Rasmus Decl. ¶ 9; Declaration of Elaine Davidson, M.D. (“Davidson Decl.”) ¶ 5; Declaration of Michael Dee, M.D. (“Dee Decl.”) ¶ 7.

19. The interested physicians chose not to accept either offer. Savage Decl. ¶ 11; Kaiser Decl. ¶ 9. Five orthopedic surgeons and two other surgeons left Saltzer.¹ Savage Decl. ¶ 11.

20. The surgeons' departure significantly destabilized Salter's finances. Savage Decl. ¶ 13. Saltzer allocates its overhead costs proportionally: the group that generates the proportion of revenue covers the greatest proportion of the overhead. *Id.* Saltzer's orthopedic practice had long been the highest-grossing practice for Saltzer. Savage Decl. ¶ 13, 16; Kaiser Decl. ¶ 8. As such, losing five surgeons from this group not only cost Saltzer their expertise and all of their dedicated patients, but also netted it \$2 million in overhead expenses that had to be absorbed immediately by the remaining Saltzer physicians—a few dozen individuals. Savage Decl. ¶ 13. Saltzer now finds itself in a serious financial limbo. Savage Decl. ¶¶ 13-16; Patterson Decl. ¶ 6; Rasmus Decl. ¶ 10.

21. With St. Luke's financial support and stability, Saltzer can weather this severe increase in overhead. Savage Decl. ¶ 13. Without St. Luke's resources, Saltzer will be forced to pursue aggressive cost-cutting measures, including slashing its physicians' pay by up to 30%; cutting services and reducing the number of low-income patients it treats; and firing administrative and nursing staff. *Id.* ¶¶ 14-15. As a result of these austerity measures and the below-market pay, Saltzer anticipates additional physician departures, with physicians both defecting to Saint Al's and splintering to form discrete, individual practices. *Id.* ¶ 14. These departures will, in turn, prompt patient migration. *Id.* The cycle will continue until Saltzer finds

¹ One of these surgeons did not leave on his own accord, but was terminated for reasons unrelated to the contract negotiations or the merger. Savage Decl. ¶ 11.

itself in a fiscal abyss that threatens to swallow it whole. Savage Decl. ¶ 14; Patterson Decl. ¶ 6; Rasmus Decl. ¶ 10.

IV. THE AFFILIATION BETWEEN ST. LUKE'S AND SALTZER WILL OCCUR GRADUALLY AND BE REVERSIBLE.

22. In the transaction at issue, St. Luke's agrees to acquire all of Saltzer's furniture, fixtures, and equipment, and the two execute a Professional Services Agreement ("PSA"). Kee Decl. ¶ 13, 64. The PSA, effective for five years and automatically renewed for three-year terms unless terminated in advance, *Id.* ¶ 17, commits Saltzer to performing medical services on behalf of St. Luke's, largely at clinics operated as departments of St. Luke's Medical Center, for which the practice and its physicians will be compensated. *Id.* ¶ 14. Nothing in the compensation package, however, rewards the physicians for whom or where they refer. Savage Decl. ¶ 12; Kunz Decl. ¶ 11; Patterson Decl. ¶ 11; Freeman Decl. ¶¶ 5-7; Kaiser Decl. ¶¶ 3-4; Page Decl. ¶¶ 11-12; Aguilar Decl. ¶¶ 5-7; Rasmus Decl. ¶ 9; Davidson Decl. ¶ 5; Dee Decl. ¶ 7.

23. Once the transaction closes, the integration will progress slowly. Kee Decl. ¶¶ 62-73. Within the first year of the transition, St. Luke's intends to apply for new practice identifiers, such as a new Taxpayer Identification Number, Medicare and Medicaid identification numbers, and new contract identification numbers for commercial payers. *Id.* ¶ 65. It also plans to establish uniform policies and protocols to ensure that Saltzer locations comply with Joint Commission standards as departments of St. Luke's. *Id.* ¶ 70. St. Luke's will convert to its own Saltzer's ordering systems for laboratory, radiology, and ancillary services, *id.* ¶ 71, and public signage, patient information, and educational materials will be modified so that marketing efforts properly reflect Saltzer's partnership with St. Luke's, *id.* ¶ 69.

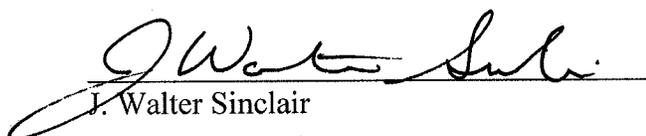
24. St. Luke's has no plans to close any of Saltzer's clinics or facilities, to dispose or discontinue the use of any major equipment, or to alter Saltzer's present service offerings. Kee

Decl. ¶ 62. Saltzer's organization structure—its directors, administrators, chief nursing officer, and other such positions—will remain unchanged for at least a year. *Id.* ¶ 63. Internal reporting lines within the organization will remain unaffected through 2013. *Id.* Moreover, tasks such as converting Saltzer's phone and email systems and integrating its coding, billing, accounts receivable, and medical records systems will not occur for over a year. *Id.* ¶ 72. Integration will transpire gradually over the course of many years. *Id.* ¶ 73.

25. The transaction is structured to permit unwinding if necessary. *Kee Decl.* ¶ 18, 64. Saltzer or its current landlord will keep title to all real property, which is leased to St. Luke's only. *Id.* ¶ 64. Should the parties be prevented from closing or required to divest, the agreement explicitly entitles Saltzer to repurchase all of its furniture, fixture, and equipment at fair market value. *Id.* The deal's terms further entitle Saltzer to return to operation as an independent physician group. *Id.* ¶ 18. In sum, the parties have structured the transaction to make unwinding possible should that course prove necessary.

DATED: December 4, 2012.

STOEL RIVES LLP


J. Walter Sinclair

Jack R. Bierig (*admitted pro hac vice*)
Tacy F. Flint (*admitted pro hac vice*)
Ben Keith (*admitted pro hac vice*)

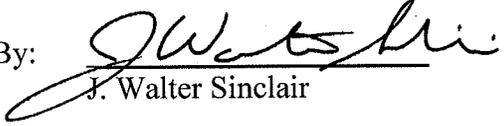
Attorneys for St. Luke's Health System

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 4, 2012, I filed the foregoing **STATEMENT OF FACTS FOR MEMORANDUM IN OPPOSITION TO PRELIMINARY INJUNCTION** 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:

kjs@dukesanlan.com – Keely E. Duke
jrisc@rischpisca.com – Jason S. Risch
dettinger@honigman.com – David Ettinger
pboivin@honigman.com – Peter E. Boivin

Attorneys for Plaintiffs

By: 
J. Walter Sinclair