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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) **PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION FOR TEMPORARY STAY PENDING APPLICATION FOR RELIEF FROM THE NINTH CIRCUIT**

Plaintiffs oppose Defendants' recently filed Motion, seeking a stay, without any time limits, while they seek relief from the Ninth Circuit. As drafted, the Motion amounts to a thinly veiled effort to obtain the relief already rejected by this Court. Moreover, Defendants' conduct, including the press statement they issued regarding this Court's June 18 ruling, indicates that this is part of a continued pattern of delay. See Exhibit A (reference to plan for "thoughtful and orderly" process of divestiture, asserting that no "timeline" governs Defendants' action).

Plaintiffs do not object to Defendants pursuing their stay request in the Ninth Circuit. But good cause does not exist for a stay of unlimited length. A short stay of very limited duration – 30 days or less – will allow Defendants to seek appropriate relief from the Ninth Circuit, which may act on an urgent basis if it concludes that any action is appropriate.

Therefore, Plaintiffs oppose any stay pending Defendants' application to the Ninth Circuit unless it is limited to a very short period of time, so that it expires in no more than 30 days. Under the Ninth Circuit's Rules, a 30-day period would allow Defendants to proceed with an "urgent" motion under Circuit Rule 27-3(b), but would not require an "emergency" motion. That would allow the parties to fully brief the stay issue and for the Ninth Circuit to act, under its rules, in an expedited manner. If the Ninth Circuit chooses (as Plaintiffs believe that it will) to reject the stay application, then divestiture can proceed forthwith and the harm from a continuing stay that this Court has identified can be eliminated.

This approach has frequently been followed in the past, including in this District. See e.g. *Latta v. Otter*, 1:13-cv-00482-CWD, 2014 WL 1909999 (D. Id. May 13, 2014) (2 days); *Olopai v. Guerrero*, CIV. A. 93-0002, 1993 WL 431230 (D. N. Mar. I. Oct. 18, 1993) (12 days); *Wells Fargo Bank v CCC Atlantic*, CV 12-521, 2013 WL 595625 (D.N.J. February 15, 2013) (10 days); Griffin *v. Harrington*, CV 10-08753-VBJ-SP, 2013 WL 3873958 (C.D. Cal. Jan. 18,

2013) at n.3 ("District judges in our district and elsewhere in this circuit commonly . . . deny[] the indefinite stay pending appeal but grant[] a much more limited stay of specified duration.") (56 days). No more than a very limited stay is appropriate under these circumstances.

St. Luke's press release also suggests to the Plaintiffs that St. Luke's and Saltzer have made no efforts in the months since this Court's judgment was entered to prepare for divestiture in accordance with that judgment.[1] Certainly, after all stay possibilities are exhausted, the Defendants ought not to be able to then claim that they will *begin* the plan for a "thoughtful and orderly", and very deliberate, divestiture process. Such an approach would result in significant harm while it (slowly) unfolds.

To avoid this prospect, Plaintiffs request that any order granting a limited stay also provide that Defendants should now be devoting diligent efforts to plan for a prompt and expeditious divestiture in the event that their stay application to Ninth Circuit is denied.

DATED this 20th day of June, 2014.

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[1] Significantly, after this Court denied Plaintiffs' Motion for Preliminary Injunction on December 20, 2012, St. Luke's was able to complete its transaction with Saltzer only a few days later. With appropriate planning, reversal of the process ought not to be substantially more difficult. This should be especially clear cut given Defendants' repeated promises that they would forego integration so that such divestiture could be accomplished.

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