

J. Walter Sinclair, ISB #2243
jwsinclair@hollandhart.com
Brian C. Wonderlich, ISB #7758
bcwonderlich@hollandhart.com
HOLLAND & HART LLP
800 West Main Street, Ste 1750
Boise, ID 83702
(208) 383-3928

Attorneys for Defendants St.
Luke's Health System, Ltd. and
St. Luke's Regional Medical
Center, Ltd.

Jack R. Bierig (*pro hac vice*)
jbierig@sidley.com
Scott D. Stein (*pro hac vice*)
sstein@sidley.com
Charles K. Schafer (*pro hac vice*)
cschafer@sidley.com
Tacy F. Flint (*pro hac vice*)
tflint@sidley.com
Ben Keith (*pro hac vice*)
bkeith@sidley.com
SIDLEY AUSTIN LLP
One South Dearborn
Chicago, IL 60603
(312) 853-7000

Brian K. Julian, ISB #2360
bjulian@ajhlaw.com
ANDERSON, JULIAN
& HULL, LLP
C.W. Moore Plaza
250 South Fifth Street, Ste. 700
Post Office Box 7426
Boise, ID 83707-7426
(208) 344-5800

Attorney for Saltzer Medical
Group, P.A.

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 (Lead Case)

**DEFENDANTS' REPLY IN SUPPORT
OF MOTION FOR TEMPORARY STAY
PENDING APPLICATION FOR RELIEF
FROM THE NINTH CIRCUIT**

FEDERAL TRADE COMMISSION; STATE
OF IDAHO

Plaintiffs,

v.

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

Defendants

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

**DEFENDANTS' REPLY IN SUPPORT OF MOTION FOR TEMPORARY STAY
PENDING APPLICATION FOR RELIEF FROM THE NINTH CIRCUIT**

Defendants respectfully submit this reply in support of their motion for a temporary stay of the Court's divestiture order.

I. A Temporary Stay Should Be Granted Until The Court Of Appeals Rules On Defendants' Application For A Stay – Or At Least For Thirty Days

Plaintiffs have agreed that the Court should grant a 30-day stay to enable the Ninth Circuit to rule on defendants' motion for a stay pending appeal addressed to that Court. Pursuant to Federal Rule of Appellate Procedure 8(a)(2), defendants are today filing in the Ninth Circuit a motion for a stay of this Court's order of divestiture. Given plaintiffs' position, defendants are filing their request for a stay pending appeal as an urgent motion under Circuit Rule 27-3(b) and have requested that the motion be resolved within thirty days.

Defendants cannot, of course, control when the Court of Appeals will act on their motion for a stay. In the circumstances, defendants respectfully request that the Court grant a temporary stay that expires when the Ninth Circuit rules on their Rule 8(a)(2) motion. It is for precisely these circumstances that Circuit Rule 27-2 expressly contemplates that a district court may order a temporary stay pending application to the Ninth Circuit for relief under Rule 8(a)(2).

In the alternative, if the Court grants a temporary stay of fixed duration, defendants respectfully request that they be given leave to request an extension of that stay in the event that the Ninth Circuit has not acted before the stay expires. After all, in filing their motion for a stay as an urgent motion with a request for a decision in thirty days, defendants have done all that they can do to expedite a decision. They should not be penalized if the Court of Appeals fails to act within the requested thirty days.

II. Defendants Have Been Working On A Plan For Divestiture, But Divestiture Cannot Be Accomplished With Any Chance Of Success Without A Careful And Deliberate Process That This Court Should Adopt

Based on nothing more than a St. Luke's press release indicating that divestiture would be handled in a "thoughtful and orderly manner," plaintiffs have asserted that defendants "have made no efforts in the months since this Court's judgment was entered to prepare for divestiture in accordance with that judgment." Resp. at 2. That assertion is false.

Defendants have been working diligently to come up with a plan to divest Saltzer in a manner that would allow the group to survive and to be a viable competitive force. But development of such a plan is quite difficult. The reason is simple: Given the departure of Saltzer's seven most profitable physicians to join Saint Alphonsus and St. Luke's commitment not to integrate Saltzer, Saltzer's operations are currently highly unprofitable. Indeed, Saltzer is generating substantial losses every month, losses which are currently being absorbed by St. Luke's. The inescapable fact is that Saltzer is very unlikely to survive if the transaction were simply reversed and Saltzer were cut loose. Saltzer's failure as a going concern would, in turn, cause substantial injury to Saltzer's employees and their families, to Saltzer's patients, and to other third parties.¹

It will take careful planning and restructuring to give Saltzer any chance of returning to profitability while minimizing the impact of divestiture on Saltzer's employees and patients. With that in mind, Saltzer has been engaged since judgment was entered in a searching review of its revenues and costs in an effort to find ways to reduce its losses as a standalone entity and potentially to make the group attractive to a third party buyer. However, every restructuring strategy so far identified will take time to implement.

¹ Defendants are prepared, should the Court desire, to submit affidavits and offer testimony proving these facts and the other facts asserted in this reply.

Saltzer and St. Luke's have also taken an important step toward putting Saltzer in a position to implement its restructuring strategies. Specifically, Saltzer and St. Luke's have entered into an Interim Management Agreement (attached hereto as Exhibit A) that gives Saltzer sole authority to take such steps with respect to its pre-transaction assets that it views as necessary to return Saltzer to profitability. Under the Interim Management Agreement, Saltzer will decide what restructuring efforts to undertake and how to do so. Notably, St. Luke's has no authority to make these decisions or to override decisions made by Saltzer.

Succinctly put, as a result of the departure of the seven physicians who brought in the most revenue to Saltzer – whatever the reasons for that departure might have been – there is no easy way to create an independent Saltzer that will inject into the market the competition that the Court viewed as having been eliminated as a result of the transaction with St. Luke's. To have any chance of success, a plan of divestiture requires careful consideration and time to implement. Since long before the Court's denial of the motion for a stay, St. Luke's and Saltzer have been working on such a plan. They will continue to do so while their motion is pending in the Court of Appeals.

Accordingly, if the Ninth Circuit denies the motion for stay, defendants will be prepared to submit a proposed plan of divestiture for review by the government plaintiffs within ten business days after the ruling. Defendants further commit to working with the government plaintiffs to submit for approval by this Court an agreed plan of divestiture if agreement on such a plan can be reached with those plaintiffs. Alternatively, if agreement is not reached within a reasonable period of time, defendants will submit to this Court their plan of divestiture, together with an explanation of the reasons that they believe that such plan should be approved.

CONCLUSION

For the foregoing reasons, defendants respectfully request that the Court grant a temporary stay of its order of divestiture while defendants' Rule 8(a)(2) motion is pending before the Ninth Circuit. If the Court instead issues a temporary stay of fixed duration as proposed by plaintiffs, defendants respectfully request that they be granted leave to seek an extension if necessary to give the Ninth Circuit time to resolve the Rule 8(a)(2) motion. Defendants also request that, if the Ninth Circuit denies the motion for stay, the Court permit the procedure for arriving at an orderly plan of divestiture as set forth above.

Respectfully submitted,

DATED: June 24, 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*)

Ben Keith (*admitted pro hac vice*)

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

ANDERSON, JULIAN & HULL, LLP

Brian K. Julian

Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 24, 2014, I filed the foregoing **REPLY IN SUPPORT OF MOTION FOR TEMPORARY STAY PENDING APPLICATION FOR RELIEF FROM THE NINTH CIRCUIT** 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:

Brett T. Delange - Atty General	brett.delange@ag.idaho.gov
Brian K. Julian – Saltzer	bjulian@ajhlaw.com
Bryan Nickels - St Al's	ban@dukescanlan.com
Carl Withroe - Atty General	Carl.Withroe@ag.idaho.gov
Chris Boisvert – TVH	crb@powerstolman.com
Colleen D. Zahn - Atty General	colleen.zahn@ag.idaho.gov
Danica Noble – FTC	dnoble@ftc.gov
David Ettinger - St Al's	dettinger@honigman.com
Douglas E. Litvack – FTC	dlitvack@ftc.gov
Eric J. Wilson - SD Atty General	ewilson@gklaw.com
Henry C. Su	hsu@ftc.gov
J. Thomas Greene – FTC	tgreen2@ftc.gov
Jack Alan Rovner	jrovner@hlconsultancy.com
Jennifer Schwartz – TVH	jls@powerstolman.com
JSM – TVH	jsm@powerstolman.com
Kadye Bird - St. Al's	klb@dukescanlan.com
Kay Lynn Moorhouse	klm@dukescanlan.com
Keely Duke - St Al's	ked@dukescanlan.com
Kevin J. O'Connor - SD Atty General	koconnor@gklaw.com
Kevin Scanlan - St Al's	kjs@dukescanlan.com
Lara Phillip - St Al's	lara.phillip@honigman.com
Matthew P. Accornero	maccornero@ftc.gov
Michael J. Perry	mperry@ftc.gov
N. Roberts - St Al's	nroberts@honigman.com
Paul Fabien - St Al's	pfabien@honigman.com
Peter C. Herrick – FTC	pherrick@ftc.gov
Portia L. Rauer – TVH	plr@powerstolman.com
Raymond Powers – TVH	rdp@powerstolman.com
Robert J. Schroeder – FTC	rschroeder@ftc.gov
S. Hakim - St. Al's	shakim@honigman.com
S.Sajewski – FTC	ssajewski@ftc.gov
Sandee Stogsdill - St Al's	sls@dukescanlan.com
Teresa Taylor - Atty General	teresa.taylor@ag.idaho.gov
Wendy K. Arends - SD Atty General	warends@gklaw.com
Syrena C. Hargrove – FTC	syrena.hargrove@usdoj.gov
Colleen D. Zahn	colleen.zahn@ag.idaho.gov
Charles A. Brown – Press	CharlesABrown@cableone.net
Matthew L. Walters - Regence	mlw@elamburke.com

Erik F. Stidham - Primary Health
Scott E. Randolph - PH & Micron

EFStidham@hollandhart.com
SERandolph@hollandhart.com

By: /s/ J. Walter Sinclair

J. Walter Sinclair

EXHIBIT A

INTERIM MANAGEMENT AGREEMENT

THIS INTERIM MANAGEMENT AGREEMENT (“Agreement”) is entered into effective June 23, 2014 by and between St. Luke’s Regional Medical Center, Ltd., a tax-exempt Idaho nonprofit corporation (“St. Luke’s”), and Saltzer Medical Group, P.A., an Idaho professional association wholly owned by licensed physicians (“Saltzer”).

WHEREAS, the parties entered into a transaction that closed on December 31, 2012 under which St. Luke’s acquired assets of Saltzer and contracted for the services of its physicians (the “Transaction”); and

WHEREAS, the United States District Court for the District of Idaho (the “Court”) entered judgment on February 28, 2014 requiring that St. Luke’s divest itself of Saltzer’s physicians and assets, which judgment is currently on appeal to the 9th Circuit Court of Appeals; and

WHEREAS, Saltzer is currently experiencing financial losses and believes it necessary to take steps to improve its financial position in order to enhance its financial viability for the benefit of its patients; and

WHEREAS, the viability of Saltzer is a matter of critical importance not only for the physicians and staff of Saltzer but for the health of the community; and

WHEREAS, the parties agree that Saltzer must be able to make decisions relating to its own financial viability in the best interest of Saltzer and the community, without regard to the interests of St. Luke’s;

NOW, THEREFORE, the Parties agree as follows:

1. Term and Termination

This Agreement will be in effect beginning on the Effective Date through December 31, 2014, or until such time as a divestiture of Saltzer from St. Luke’s is complete, whichever is sooner. The parties may extend the term of this Agreement by an amendment executed by the parties. Notwithstanding the foregoing, the parties intend this Agreement to comply with all orders entered in the consolidated antitrust litigation involving St. Luke’s Health System, Saint Alphonsus, Treasure Valley Hospital, the Federal Trade Commission, and the State of Idaho, and they understand and agree that this Agreement may be terminated in the event the Court disapproves this Agreement or otherwise directs or orders that it be terminated.

2. Saltzer’s Decision-Making Authority

(a) Saltzer shall have the right to make the following decisions independently of St. Luke’s:

(i) Decisions regarding whether it is necessary for Saltzer, in order to achieve financial viability, to eliminate or sell any lines of service, including decisions regarding which lines of service, if any, to eliminate or sell;

(ii) Decisions regarding whether it is necessary for Saltzer, in order to achieve financial viability, to decrease its real estate square footage, including decisions regarding which of its real estate interests, if any, should be divested, provided that any decisions affecting rates will be made in accordance with commercial reasonableness and fair market value standards, and provided that this decision-making authority shall not extend to real estate owned or leased by St. Luke's prior to the closing of the Transaction or acquired by St. Luke's independently of the Transaction; and

(iii) Decisions regarding whether it is necessary for Saltzer, in order to achieve financial viability, to sell furniture, fixtures, and equipment, including decisions regarding which such assets should be sold. Such decision-making authority shall extend to furniture, fixtures, and equipment acquired by St. Luke's in the Transaction, but it shall not include decisions relating to any assets owned or leased by St. Luke's prior to the closing of the Transaction or acquired by St. Luke's independently of the Transaction.

(b) Saltzer will make the independent decisions described above in a manner consistent with any applicable procedures described in the governing documents of Saltzer Medical Group, P.A. If such procedures contemplate the involvement of any individual who is at the time the decision is to be made a St. Luke's employee, that St. Luke's employee will recuse himself or herself.

(c) Nothing in this Agreement prohibits Saltzer from consulting with St. Luke's personnel regarding any matter or decision; however, St. Luke's shall have no authority to override any decision Saltzer makes on a subject over which it has been granted independent authority pursuant to this Agreement.

3. Agreement Does Not Affect Economic Rights

This Agreement relates solely to decision-making authority, and nothing in this Agreement grants the parties any new right or deprives them of any previously existing right to income or to the proceeds of any sale of assets. In particular and without limitation, in the event that Saltzer sells fixed assets owned by St. Luke's and acquired by St. Luke's as part of the Transaction, St. Luke's shall be entitled to the proceeds of such sales.

4. Relationship to Prior Agreements


In the event any term of this Agreement conflicts with a term in any prior agreement between the parties, this Agreement shall control.

5. Compliance


Either party may cancel this Agreement if, in the good faith judgment of counsel for St. Luke's or Saltzer, any aspect of it fails to comply with applicable law or regulation or jeopardizes the I.R.C. § 501(c)(3) status of any St. Luke's entity. This Agreement does not authorize, and shall not be construed to authorize, any party to take any action or make any decision that is inconsistent with applicable law or regulation.

INTENDING TO BE LEGALLY BOUND, the parties hereto enter into this Interim Management Agreement as of the effective date set forth above.

ST. LUKE'S REGIONAL MEDICAL CENTER, LTD.


By: Kathy Moore
Its: CEO
Date: 6/23/2014

SALTZER MEDICAL GROUP, P.A.


By: John Kaiser, M.D.
Its: President
Date: 6/23/2014