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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)

**PRIVATE PLAINTIFFS' MOTION
FOR LEAVE TO FILE
SUPPLEMENTAL BRIEF IN
OPPOSITION TO MOTION FOR
STAY AND MEMORANDUM IN
SUPPORT**

Private Plaintiffs move this Court for leave to file a short Supplemental Brief supporting their Opposition to Defendants' Motion for Stay Pending Appeal (dated March 28, 2014, Dkt.

No. 493), and in support thereof state as follows: Private Plaintiffs wish to inform the Court concerning new evidence that has come to light that is highly relevant to the balance of harms related to the pending stay issue. Private Plaintiffs therefore seek leave to file a supplemental three page brief and supporting declaration, copies of which are attached.

DATED this 30th day of May, 2014.

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I HEREBY CERTIFY that on the 30th day of May, 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.

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Defendants.

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

**PRIVATE PLAINTIFFS'
SUPPLEMENTAL BRIEF IN
OPPOSITION TO MOTION FOR
STAY**

Private Plaintiffs file this Supplemental Brief in Opposition to Defendants' Motion for Stay Pending Appeal, to bring new, highly relevant evidence to the Court's attention.

As explained in the declaration of Lannie Checketts, attached hereto, Saltzer outpatient referrals to Saint Alphonsus Nampa have declined dramatically, especially in the first four months of calendar year 2014. In 2013, after Saltzer had been acquired by St. Luke's, those outpatient cases declined by 29%. In the first four months of calendar year 2014, they declined (compared to the same period in 2013) by an additional 37%. Overall, the decline since the acquisition of Saltzer by St. Luke's has exceeded 55%. Checketts Decl. ¶¶ 3-5.¹ This confirms the concerns raised by the Private Plaintiffs in their earlier Opposition [Dkt. No. 493] dated March 28, 2014 that any stay would result in serious harm to the Private Plaintiffs.

Unfortunately, there is every reason to believe that St. Luke's is now largely uninhibited in its efforts to exploit its control of Saltzer, whatever harm is caused thereby. One of this Court's "critical assumptions" in denying the Private Plaintiffs' Motion for Preliminary Injunction in December, 2012, was that "[p]rior to trial, there will be no measureable reduction in referrals to St. Al's from Saltzer physicians." Memorandum Decision and Order dated December 20, 2012 at p. 8. (Emphasis added). This Court predicted that St. Luke's would be reluctant to change Saltzer's referrals prior to an "accounting . . . at a trial. . ." December 14, 2012 Preliminary Injunction Hearing Tr. at ll. 160:4-17. But, with the trial now over, Defendants have apparently concluded that they are no longer so restrained. This was certainly not the purpose of the Court's judgment requiring divestiture.

In fact, Defendants' statements in their stay briefs implicitly confirm their anticompetitive intentions. Defendants say only that "they will not undertake any change that would impede divestiture or weaken a divested Saltzer," Defendants' Motion for Stay Pending

¹ There has also been a significant decline on the inpatient side. As to the inpatient data, unlike the outpatient data, there is a possibility that there are other factors which could have contributed to some of the inpatient decline.

Appeal [Dkt. No. 473] at p. 19, and, that they “have committed to do nothing during the pendency of the appeal that would hinder or prevent divestiture,” Reply in Support of Stay Pending Appeal [Dkt. Nos. 495 and 498] at p. 1. Of course, these promises say nothing about changing referrals, pulling physicians from networks, or utilizing bargaining power with payors. The change in Saltzer’s referral patterns provides compelling evidence that St. Luke’s will not forego anticompetitive behavior pending appeal.

Continued and even greater harm can be expected if the judgment is stayed, or the current de facto stay is continued. The only way to avoid such harm is for this Court’s divestiture order to be effectuated immediately.

DATED this 30th day of May, 2014.

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**DECLARATION OF LANNIE
CHECKETTS**

Lannie Checketts states as follows:

1. I am the Chief Financial Officer of Saint Alphonsus Hospital in Nampa, Idaho. I have held this position for 15 years. If sworn as a witness, I could testify competently to the statements in this declaration.

2. I was asked to review the cases at Saint Alphonsus Nampa attributable to Saltzer Medical Group physicians over time. I compared outpatient cases with the Saltzer doctor as the attending physician for calendar year 2012, calendar year 2013 and the first four months of calendar year 2014. I compared the first four months of 2014 to the same period in 2013, so as to avoid any possible distortions due to any seasonal fluctuations.

3. I found that outpatient cases where the Saltzer physician was the attending physician (reviewing only those doctors who were at Saltzer throughout the entire period) fell by 29% from calendar year 2012 to 2013. This is consistent with prior observations I have made.

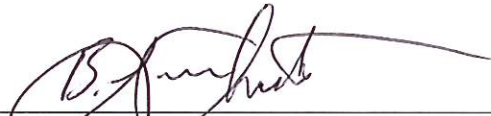
4. I found that in the first four months of calendar year 2014, the cases in which the same Saltzer physicians were attending physicians dropped dramatically as compared to the first four months in 2013, by 37%.

5. Overall, the decline since the acquisition of Saltzer by St. Luke's has exceeded 55%.

6. I am unaware of any events that could have caused this decline other than decisions or referrals by the Saltzer physicians, their staffs or other St. Luke's personnel.

7. I have also observed a significant decline in inpatient admissions from the same Saltzer doctors over these same periods. However, unlike the outpatient pattern, I am aware of other events that may have had an effect on the inpatient admissions. I am unable to determine the degree to which these other factors caused the decline in admissions.

8. I declare under penalty of perjury that the foregoing is true and correct this 30 of
May, 2014.



Lannie Cheeketts

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