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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

SAINT ALPHONSUS MEDICAL CENTER - NAMPA, INC., et al.,

Plaintiffs,

vs.

ST. LUKE'S HEALTH SYSTEM, LTD.,

Defendant.

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

PLAINTIFF STATE OF IDAHO'S MEMORANDUM IN SUPPORT OF ITS MOTION FOR AWARD OF ATTORNEYS' FEES AND NON-TAXABLE COSTS

FEDERAL TRADE COMMISSION and STATE OF IDAHO,

Plaintiffs,

vs.

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

Defendants.

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

Plaintiff State of Idaho, by and through its undersigned counsel, submits the following Memorandum in Support of its Motion for Award of Attorneys' Fees and Non-Taxable Costs, and respectfully requests that the Court order Defendants St. Luke's Health System, Ltd. ("St. Luke's") and Saltzer Medical Group, P.A. ("Saltzer") to pay to the State of Idaho its reasonable attorneys' fees and costs.[1] Accompanying this motion are the Declarations of Brett DeLange and Kevin O'Connor, and exhibits thereto, which set forth the requested amount of attorneys' fees and costs.[2]

BACKGROUND

In or around early 2012, the Office of the Attorney General for the State of Idaho (the "Attorney General") commenced its investigation of the proposed acquisition of Saltzer by St. Luke's (hereinafter, "the Acquisition"). Sensing that the investigation might lead to litigation, on or about October 24, 2012, the Attorney General retained Godfrey & Kahn, S.C. ("Godfrey & Kahn"), a law firm with significant antitrust litigation experience. *See* Declaration of Brett DeLange ("DeLange Decl.") at ¶¶ 5-7; Declaration of Kevin O'Connor ("O'Connor Decl.") at ¶¶ 4-8.

Thereafter, on March 12, 2013, the Attorney General and the Federal Trade Commission ("FTC") (collectively, the "government plaintiffs") filed a joint complaint seeking an order finding that the Acquisition violated the Clayton Act and the Idaho Competition Act. Dkt. 98. As relief, the government plaintiffs asked the Court to enjoin St. Luke's from acquiring Saltzer, and to order that St. Luke's divest Saltzer and its assets. *Id.* at ¶ 67. In addition, should it

[1] St. Luke's has filed a notice of appeal. In the event that the State of Idaho prevails on appeal, the State will file a supplemental motion with a request for fees and costs expended prosecuting the appeal.

[2] Saint Alphonsus Medical Center- Nampa, Saint Alphonsus Health System, Inc., and Saint Alphonsus Regional Medical Center, Inc. (collectively, "Saint Alphonsus"), and Treasure Valley Hospital ("TVH"), also have filed motions seeking their respective fees and costs. The State of Idaho hereby adopts and incorporates by reference, to the extent applicable, the arguments made in those motions and their supporting declarations.

prevail, the State of Idaho separately and specifically requested an award of reasonable attorneys' fees and costs.[3] *Id.*

On January 24, 2014, following conclusion of expedited discovery and a four-week trial, the Court ruled in favor of the State of Idaho and the other plaintiffs. Dkt. 463. In doing so, the Court's order mirrored the State of Idaho's request for relief. The Court ruled that the Acquisition violated the Clayton Act and the Idaho Competition Act, permanently enjoined St. Luke's from acquiring Saltzer, and ordered St. Luke's to divest Saltzer's assets. *Id*. The Court entered Judgment accordingly on February 28, 2014. Dkt. 471.

ARGUMENT

I. THE CLAYTON ACT AND THE IDAHO COMPETITION ACT EACH REQUIRE THAT A PREVAILING PARTY RECOVER ITS REASONABLE ATTORNEY FEES AND COSTS.

Under the American rule, every party normally bears its own fees and costs of litigation—unless Congress or a state legislature statutorily provides otherwise. *See Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983); *see Carbonell v. INS*, 429 F.3d 894, 897-98 (9th Cir. 2005). The Clayton Act and the Idaho Competition Act are such statutes.

Section 16 of the Clayton Act mandates that a court shall award the "costs of suit"—including reasonable attorneys' fees—to a party who "substantially prevails" in bringing a claim under the statute. *See* 15 U.S.C. § 26. *See also Costco Wholesale Corp. v. Hoen*, 538 F.3d 1128, 1136 (9th Cir. 2008); *State of Arizona v. Maricopa Cnty. Med. Soc'y*, 578 F. Supp. 1262, 1263 (D. Ariz. 1984).

[3] The Court subsequently consolidated the government plaintiffs' case with the case filed by Saint Alphonsus and TVH. *See* Dkt. 92.

Likewise, the Idaho Competition Act provides for mandatory recovery of attorney's fees and costs in connection with an action brought under that statute. *See* Idaho Code §§ 48-108(1)(d), 48-112.

The trial court has discretion to decide what amount is reasonable. *See Hasbrouck v. Texaco, Inc.*, 879 F.2d 632, 635 (9th Cir. 1989); *United States Football League v. Nat'l Football League*, 704 F. Supp. 474, 480 (S.D.N.Y. 1989) (court must determine what is a reasonable amount, and granting fee petition requesting over $5 million under the Clayton Act), *aff'd*, 887 F.2d 408 (2d Cir. 1989). The court's decision will not be disturbed absent an abuse of discretion or clear error of law. *See Hasbrouck*, 879 F.2d at 635.

II. THE STATE OF IDAHO IS A PREVAILING PARTY.

As noted above, the Idaho Competition Act expressly provides that the State of Idaho shall recover its fees and costs if it prevails. *See* Idaho Code §§ 48-108(1)(d), 48-112. Likewise, for purposes of the Clayton Act, the State of Idaho is considered a "person." *See*, *e.g.*, *Hawaii v. Standard Oil Co.*, 405 U.S. 251, 260-61 (1972); *State of Illinois v. Sangamo Const. Co.*, 657 F.2d 855, 858 (7th Cir. 1981). Therefore, under the Clayton Act, the State of Idaho stands on the same footing as the private plaintiffs in its ability to recover fees and costs. *See California v. Am. Stores*, 495 U.S. 271, 281-82 (1990) (upholding injunctive relief awarded to state in suit brought under Section 16 of the Clayton Act).

In its Order and Judgment, the Court granted the remedy sought by the State of Idaho in its entirety. Dkt. 463. As requested by the State of Idaho, the Court granted permanent injunctive relief and ordered complete divestiture. *Id*. Consequently, the State of Idaho is undoubtedly a "prevailing party" with respect to its claims brought under both the Idaho Competition Act and the Clayton Act.

Because the State of Idaho prevailed on its claims, it is entitled to reasonable attorneys' fees and costs. *See* Idaho Code § 48-112; 15 U.S.C. § 26; *see also Hasbrouck*, 879 F.2d at 635; *Maricopa Cnty. Med. Soc'y*, 578 F. Supp. at 1264; *New York v. Salton, Inc.*, 265 F. Supp. 2d 310, 314 (S.D.N.Y. 2003) (approving motion for final approval of settlement order that included attorneys' fees following a two-year investigation by plaintiff states into the alleged violations of federal and state antitrust laws by the defendant); *State of Washington v. Tosco Corp.*, No. C97-1773, 1997 WL 820969, at *6 (approving consent decree that included attorneys' fees for State of Washington pursuant to 15 U.S.C. § 26).

III. THE FEES REQUESTED ARE REASONABLE.

1. The Lodestar Calculation.

In determining the proper amount of attorneys' fees and costs, the starting point is the "lodestar amount." *See Blum v. Stenson*, 465 U.S. 886, 888 (1984); *Alliance for Prop. Rights & Fiscal Responsibility v. City of Idaho Falls*, No. 4:12-cv-146, 2013 WL 551028, at *4 (D. Idaho Feb. 12, 2013).[4] The Court determines the lodestar amount by "multiplying the number of hours reasonably spent on the litigation by a reasonable hourly rate." *See Alliance for Prop. Rights*, 2013 WL 551028, at *4. Employing a lodestar analysis, federal courts have routinely awarded fees and costs to state attorneys general in antitrust cases.

The lodestar amount is presumptively the reasonable fee amount. *See Pennsylvania v. Delaware Valley Citizens' Council for Clean Air (Delaware I)*, 478 U.S. 546 (1986); *Alliance for Prop. Rights*, 2013 WL 551028, at *6. The Court may use a multiplier to adjust the lodestar

[4] Most fee award cases from the District of Idaho involve claims under civil rights statutes and not the Clayton Act or the Idaho Competition Act. However the analysis to determine the "lodestar amount" is the same for civil cases in which an award of attorneys' fees is authorized by statute. *See Hasbrouck v. Texaco, Inc.*, 879 F.2d 632, 639 (9th Cir. 1989).

amount upward or downward only in exceptional cases, supported by both "specific evidence" on the record and detailed findings. *See Alliance for Prop. Rights*, 2013 WL 551028, at *6.

Depending on the circumstances of the particular case, the Court can adjust the lodestar figure based on several factors, to the extent the initial lodestar calculation does not subsume those factors already. *See id.*; *see also Perdue v. Kenny A ex rel. Winn*, 559 U.S. 542, 533 (2010). These factors include: (1) time limitations imposed by the client or the circumstances; (2) the amount involved and the results obtained; (3) the experience, reputation, and ability of the attorneys; (4) the "undesirability" of the case; (5) the nature and length of the professional relationship with the client; and (6) awards in similar cases. *See Alliance for Prop. Rights*, 2013 WL 551028, at *6 (citing *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975)).

2. The Hours Billed Are Reasonable.

To determine a reasonable number of hours in calculating the lodestar figure, the Court should consider the results obtained and the extent of success. *See Alliance for Prop. Rights*, 2013 WL 551028, at *6. Where, as here, a plaintiff has obtained "excellent results," counsel for plaintiff should recover a fully compensatory fee. *See Hensley*, 461 U.S. at 435; *see also Idaho Bldg. & Const. Trades Council, AFL-CIO v. Wasden*, No. 1:11-cv-00253, 2012 WL 1313253, at *2 (D. Idaho April 16, 2012). Beyond the results obtained, the Court also should determine if the hours billed were "excessive, redundant, or otherwise unnecessary." *See Hensley*, 461 U.S. at 434; *see also Idaho Bldg. & Const. Trades Council,* 2012 WL 1313253, at *2. The Court should consider the reasonableness of the documented hours without resort to blanket measures such as "an across-the-board" reduction or rejection of all hours. *See Idaho Bldg. & Const. Trades Council,* 2012 WL 1313253, at *2.

In this case, the Attorney General and Godfrey & Kahn undoubtedly achieved a successful outcome on behalf of the State of Idaho. The Court permanently enjoined the Acquisition and ordered St. Luke's to fully divest Saltzer and its assets. *See* Dkt. 463. In achieving this result, the hours expended by attorneys and staff from the Attorney General's office and Godfrey & Kahn were reasonable. *See* DeLange Decl. at ¶¶ 27-29, 30; *see* O'Connor Decl. at ¶¶ 15, 23. Indeed, given the complexity of the matter and its importance to the State of Idaho, the Attorney General and Godfrey & Kahn staffed the case quite leanly. *See* DeLange Decl. at ¶¶ 17, 18, 35.

The Attorney General staffed the matter with three attorneys, all of whom avoided duplicative tasks. *See* DeLange Decl. at ¶ 18. Only one of these attorneys participated in the trial. *Id.* at ¶ 19. (In comparison, six attorneys from the Federal Trade Commission worked full-time on the case for the entire duration of the trial. *Id.* at ¶ 19.) The Attorney General also employed office staff to work on the matter, including an office secretary who dedicated hundreds of hours of time to organizing the local operations for the government plaintiffs. *Id.* at ¶ 20. None of these staff members billed any time to the matter for which the Attorney General now seeks an award of fees. *Id*. In total, attorneys from the Attorney General's Office billed 1,886.1 hours to the matter. *Id.* at ¶ 22, **Exhibit A**.[5]

Likewise, Godfrey & Kahn staffed the matter with only three attorneys and one main paralegal. *See* O'Connor Decl. at ¶¶ 8, 18. In performing its work, Godfrey & Kahn professionals took care to avoid duplicative tasks. *Id.* at ¶¶ 18, 22. At trial, Godfrey & Kahn sent only one attorney and no paralegals. *Id.* at ¶ 21. Where possible, Godfrey & Kahn used

[5] The Attorney General's Office and Godfrey & Kahn have provided spreadsheets detailing the breakdown of hours spent on the matter. Similar to TVH, the spreadsheets indicate the specific amount of time spent on each task in parentheticals. This is not considered "block billing" because the amount of time spent by each professional on each task can be readily discerned from the parenthetical.

non-timekeeping staff such as secretaries and office assistants to accomplish ministerial tasks. *Id.* at ¶ 15. Together, timekeepers at Godfrey & Kahn billed 1,710.6 hours to the matter. *Id.* at ¶ 13, **Exhibit B**.

Time is reasonably expended on the litigation when it is "useful and of a type ordinarily necessary to secure the final result obtained from the litigation." *Delaware Valley I,* 478 U.S. at 557 (citation and internal quotations omitted). A fee award should include every item of service, including service in matters that, at the time rendered, would have been undertaken by a reasonably prudent lawyer to advance or protect his or her client's interest. *See Hasbrouck*, 879 F.2d at 638.

Before filing the Complaint, professionals from both the Attorney General's Office and Godfrey & Kahn billed time that the State of Idaho now includes as part of the fees sought through this motion. These fees are fully recoverable. *See Maricopa Cnty. Med. Soc'y*, 578 F. Supp. at 1266 (awarding fees for prefiling investigative time in context of antitrust investigation by state attorney general employing outside counsel); *Sierra Club v. U.S. E.P.A.,* 625 F. Supp. 2d 863, 869 (N.D. Cal. 2007) (finding that the plaintiff was entitled to remuneration for pre-litigation activity, including investigative activity); *Salton,* 265 F. Supp. 2d at 314 (approving motion for final approval of settlement order that included attorneys' fees for a two-year investigation by plaintiff states into the alleged violations of federal and state antitrust laws by the defendant); *see also* § 48-108(1)(d) (allowing recovery of investigative costs and expenses).

Likewise, the fees incurred in preparing this motion are also fully recoverable. *See Hensley*, 461 U.S. at 434 (holding that time spent preparing a motion for fees in ERISA case should be compensated); *In re Nucorp Energy, Inc.*, 764 F.2d 655, 661 (9th Cir. 1985) (reversing

denial of request for compensation for fee petition preparation); *United States Football League*, 704 F. Supp. at 480 (finding that prevailing party in a Clayton Act case is entitled to amount spent on fee petition).

The hours expended by professionals on behalf of the State of Idaho were reasonable, particularly in light of the schedule ordered by the Court. A lawsuit with this level of complexity ordinarily would involve at least one to three years of discovery and preparation for trial. Because of its fast track status, however, attorneys for the State of Idaho—working together with other plaintiffs—prepared this case for trial in less than a year.

3. The Hourly Rates Are Reasonable.

After determining the number of hours the litigation reasonably required, the lodestar method requires the Court to evaluate the reasonableness of the rates charged. *See Hensley*, 461 U.S. at 433. A reasonable hourly rate is measured against the objective scale of similar services by lawyers of reasonably comparable skill, experience, and reputation. *See Blum,* 465 U.S. at 895 (involving claims under 42 U.S.C. § 1988); *Stevedoring Servs. of AM, Inc. v. DIR, Office of Workers' Comp. Programs*, 445 F. App'x 912, 913 (9th Cir. 2011); *Alliance for Property Rights*, 2013 WL 551028, at *4-6.

The Godfrey & Kahn timekeepers who billed time to this matter, and for whom the State of Idaho seeks an award of fees, have the following hourly rates:

a. Kevin O'Connor: $465

b. Eric Wilson: $465

c. Wendy Arends: $275

d. Aaron Seligman: $215

e. Jill Bradshaw (paraprofessional): $185

f. Jacqueline Schwartz (paralegal): $175

g. Nicole Talbott Settle (paralegal): $175

h. Leah Viola (paralegal): $165

The Ninth Circuit and this Court have recognized that the application of a "forum rule" may sometimes yield unreasonable results, so "rates outside the forum may be used if local counsel was unavailable, either because they are unwilling or unable to perform because they lack the degree of experience, expertise, or specialization required to handle properly the case." *Gates v. Deukmejian*, 987 F.2d 1392, 1405-06 (9th Cir. 1992) (finding that the district court did not abuse its discretion in awarding fees at out-of-forum rates where the evidence established that law firms in the forum "with the requisite expertise and experience" were unavailable); *see also United States v. Nat'l Rehab Partners, Inc.*, 2007 WL 2790397, at *3 (D. Idaho Sept. 24, 2007) (Winmill, J.); *Hash v. United States*, No. 1:99-cv-00324, 2012 WL 1252624, at *5 (D. Idaho Apr. 13, 2012) (finding that the plaintiffs' declarations constituted sufficient evidence to justify granting the exception to the forum rule).

In granting an exception to the forum rule for a case brought pursuant to the National Trails System Act, the Court in *Hash* stated that the "District of Idaho has a far smaller pool of attorneys from which to choose for specialized matters," in concluding that "it takes less of a showing . . . than it would in larger jurisdictions to justify out-of-forum rates." 2012 WL 1252624, at *6-7. *See also Ingram v. Oroudjian,* 647 F.3d 925, 928 (9th Cir. 2011) (court may "rely on its own familiarity with the legal market" in determining a reasonable hourly rate).

The Attorney General's Office retained counsel outside of Idaho because this matter required a significant level of expertise and specialization in complex antitrust litigation. *See* DeLange Decl. at ¶¶ 8, 11. There are no health care antitrust specialists in Boise, and no lawyers

with the experience to litigate the complex health care antitrust issues raised in this case. DeLange Decl. at ¶ 12. Thus, the relevant community of law firms for purposes of assessing the rates in this case are those communities where such lead antitrust lawyers mostly exist—namely larger cities such as Chicago, New York, and Washington, D.C. Particularly given the firm's experience, the rates charged by Godfrey & Kahn are appreciably less than the rates in that community. *See, e.g.*, Karen Sloan, *$1,000 Per Hour Isn't Rare Anymore*, NAT'L L.J., Jan. 13, 2014, at 11 (citing average hourly rates at firms in large cities ranging from $675 to $1,065 for partners, and $425 to $490 for associates); Leigh Jones, *The Best Still Charge The Most*, NAT'L L.J., Dec. 17, 2012, at 11 (based on 2012 fee surveys, median partner hourly rate was $501 and median associate hourly rate was $317 for all firms responding to the survey nationwide, regardless of market). Indeed, the rates that Godfrey & Kahn charged the State of Idaho are presumably far less than the rates charged by other lawyers from outside Idaho to their respective clients in this matter.

In setting its hourly rates, Godfrey & Kahn looks to the rates charged by law firms in and around Wisconsin, but adjusts its rates as necessary for certain attorneys based on their expertise. *See* O'Connor Decl. at ¶ 10. Much like outside counsel for Saint Alphonsus, attorneys from Godfrey & Kahn have significant experience in antitrust matters, and health care acquisitions such as the one at issue in this case. Mr. O'Connor is nationally recognized for his work in antitrust law, and previously served as Assistant Attorney General in charge of antitrust enforcement and head of the Office of Consumer Protection and Antitrust at the Wisconsin Department of Justice. *See* O'Connor Decl. at ¶¶ 5-7. Mr. Wilson has significant litigation and antitrust experience, and has previously served as a federal prosecutor in Chicago and a state

prosecutor in Wisconsin where he was the chief antitrust attorney for the State of Wisconsin. *See id.* at ¶ 8.

Although Godfrey & Kahn professionals could have reasonably billed at a higher rate given their experience, Godfrey & Kahn voluntarily capped its hourly rate for attorneys involved in this case at $465. In comparison, given his background and experience, during 2013, Mr. O'Connor ordinarily billed at an hourly rate of $620.

Likewise, the hourly rates for Godfrey & Kahn paralegals are consistent with market rates charged by similarly situated law firms for those with similar training and experience. *See* O'Connor Decl. at ¶ 10; *cf. Missouri v. Jenkins*, 491 U.S. 274 (1989) (finding that reasonable attorneys' fees included paralegal fees in a § 1988 case); *see United States Football League*, 887 F.2d at 415-16 (finding that hourly market rate for paralegal services was included in attorney fee award under the Clayton Act); *see also Laurino v. Syringa Gen. Hosp.*, No. 98-cv-0439-EJL, 2005 WL 1847173, at *6 (D. Idaho Aug. 3, 2005).

The rates sought by the attorneys from the Attorney General's Office also are reasonable. Of course, government attorneys do not ordinarily charge an hourly rate. In seeking a fee award, however, case law would fully support the Attorney General utilizing an hourly rate comparable to private practice attorneys. *See Maricopa Cnty. Med. Soc'y*, 578 F. Supp. at 1271 (concluding that it is reasonable to compensate members of the Attorney General's staff at rates consistent with fees charged by similarly skilled attorneys in private practice). Nonetheless, the Attorney General has voluntarily opted to seek much lower rates. *See* DeLange Decl. at ¶ 16.

Specifically, the State of Idaho proposes the following hourly rates for the government attorneys who billed time to this matter:

a. Brett DeLange: $200

b. Carl Withroe: $175

c. Colleen Zahn: $175

d. Stephanie Guyon: $175

e. Jane Hochberg: $175

Importantly, the hourly rates submitted by the State of Idaho are the same throughout the entire matter. Although Godfrey & Kahn's involvement in this matter spanned two annual rate increases passed on to other clients of the firm, Godfrey & Kahn opted not to impose any rate increase for the State of Idaho. *See* O'Connor Decl. at ¶ 16. Likewise, the hourly rates for attorneys from the Attorney General's Office are uniform throughout the matter. *See* DeLange Decl. at ¶ 15.

Despite the compressed schedule and the complexity of the issues, the Court remarked on more than one occasion on the high quality of lawyering in this case. *See* Trial Tr. 3868:21-25; 3664:8-16. Due in part to that lawyering, the Court ordered all of the relief sought by the State of Idaho. Therefore, the State of Idaho respectfully requests that the Court grant its motion for an award of fees and costs in full.

IV. THE COSTS REQUESTED ARE REASONABLE.

A court may "tax as costs" certain expenses, including fees of the clerk and marshal, transcript fees, witness fees, docketing fees, and compensation of court-appointed experts and interpreters. *See* 28 U.S.C. § 1920. Such "taxable costs" are recoverable by the prevailing party.

See id. The Attorney General has submitted a separate Bill of Costs for these "taxable costs," for which it seeks recovery in full.

In addition, the Attorney General seeks recovery of its "non-taxable" costs. When the State of Idaho prevails in an antitrust action brought under the Idaho Competition Act, the statute provides that the Court "shall award" the Attorney General not only its attorney fees, but also its costs. *See* Idaho Code § 48-112. As part of these costs, the statute specifically provides that the Attorney General can recover "reasonable expenses" and "investigative costs"—costs typically not considered "taxable costs." *See* Idaho Code § 48-108(1)(d).

This Court has allowed a prevailing plaintiff to recover non-taxable costs where a statute authorizes an award of reasonable attorneys' fees to a prevailing party. *See Scentsy, Inc. v. B.R. Chase, LLC*, No. 1:11-cv-00249, 2013 WL 4525400, at *7 (D. Idaho Aug. 26, 2013) (Winmill, J.); *see also Velasco v. Broadway Arctic Circle, LLC*, No. 4:11-cv-00102, 2012 WL 5921167, at *8 (D. Idaho Nov. 12, 2012) (stating same). These costs include ordinary litigation expenses such as travel, overnight delivery, e-discovery processing, and online research. *See Scentsy*, 2013 WL 4525400, at *7 (awarding computer-based legal research and e-discovery costs); *see Velasco*, 2012 WL 5921167, at *8 (stating that recoverable costs include litigation expenses such as travel and courier costs). Generally, any costs that normally would be charged to a fee-paying client are recoverable. *See Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994).

The costs submitted by the State of Idaho include necessary litigation costs such as travel expenses, overnight mail, and minimal computerized research. As detailed in **Exhibit C** to the Declaration of Kevin J. O'Connor, the non-taxable costs charged by Godfrey & Kahn were $25,007.78, and consist of the following:

a.	Travel expenses:	$20,414.79
b.	Online legal research:	$3,460.77
c.	Courier/delivery costs:	$1,029.60
d.	Telephone costs:	$102.62

As detailed in **Exhibit B** to the Declaration of Brett DeLange, the non-taxable costs paid directly by the State of Idaho were $20,095.32, and consist of the following:

a.	Travel expenses:	$6,729.44
b.	Expert consulting fees:	$10,800
c.	Courier/delivery costs:	$287.31
d.	Telephone costs:	$68.57
e.	Other:	$2,210

All of these costs are properly recoverable. Because the State of Idaho litigated this case pursuant to an expedited schedule, the costs incurred for overnight delivery services, document processing, and online research, among others, were critical to keeping up with the compressed discovery period and trial. *See* O'Connor Decl. at ¶ 23; DeLange Decl. at ¶ 30. Because the non-taxable costs were reasonable, necessary to the investigation and litigation, and are typically charged to a fee-paying client, the Court should award them in full to the State of Idaho.

CONCLUSION

Working together with the other plaintiffs, the State of Idaho obtained an enormously successful result. Had the State of Idaho not filed suit, as the Court itself ruled, the Acquisition likely would have resulted in higher premiums, higher out-of-pocket costs and higher costs of health care for Idaho consumers. *See* Dkt. 464 at ¶¶ 130-31, 146. In granting an injunction and ordering complete divestiture, the Court fully vindicated the claims brought by the State of Idaho against the defendants. Based on the foregoing, Idaho respectfully requests that the Court grant its motion and award to the State of Idaho total reasonable attorneys' fees in the amount $972,993.50, total taxable costs in the amount of $68,294.06, and total non-taxable costs in the amount of $45,103.10.

Dated: March 14, 2014

Respectfully submitted,

/s/ Eric J. Wilson

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14th day of March, 2014, I filed the foregoing 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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