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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.

FEDERAL TRADE COMMISSION and STATE
OF IDAHO,

Plaintiffs,

v.

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

Defendants.

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

**TREASURE VALLEY HOSPITAL'S
MEMORANDUM IN SUPPORT OF
MOTION FOR ATTORNEY FEES
AND NON-TAXABLE COSTS**

COMES NOW, Plaintiff, Treasure Valley Hospital Limited Partnership (“TVH”), by and through its counsel of record, Powers Tolman Farley, PLLC, and submits this memorandum in support of its motion for an award of attorney fees and non-taxable costs.¹

INTRODUCTION

The private Plaintiffs, including TVH, brought suit against Defendants for violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, for unlawful conduct under Section 1 of the Sherman Act, 15 U.S.C. § 1, and for violation of Idaho Code §§ 48-104 and 48-106. (Dkt. 1) The Court in its “Memorandum Decision and Order” and “Findings of Fact and Conclusions of Law” found that the acquisition of Saltzer by St. Luke’s violated § 7 of the Clayton Act and the Idaho Competition Act. (Dkts. 463 and 464) The Court granted the injunctive relief sought by the private Plaintiffs as set forth in the Judgment entered herein. (Dkt. 471) Thus, TVH is a prevailing party.

If a plaintiff substantially prevails in a claim brought under 15 U.S.C. § 18, the court shall award costs of suit, including a reasonable attorney’s fee. 15 U.S.C. § 26. TVH substantially prevailed since this Court ordered the injunctive relief sought. Additionally, Idaho Code § 48-113 provides for the award of reasonable costs and attorney fees associated with the bringing of a private cause of action for injury related to violation of Idaho’s Competition Act (Idaho Code § 48-101 *et seq.*) Therefore, TVH is entitled to an award of reasonable attorney fees in the amount of \$ 348,977.50 and non-taxable costs, including paralegal fees, in the amount of \$110,124.85 for a total of \$459,102.35.

¹ TVH incorporates herein by reference, to the extent applicable, the arguments contained in the attorney fee and cost petitions filed by the co-Plaintiffs in this matter.

ARGUMENT

A. LEGAL STANDARD.

Federal Rule of Civil Procedure 54(d)(2)(A) states that a claim for attorney fees and related nontaxable costs must be by motion. *See also* Dist. Idaho Loc. Civ. R. 54.2. The motion must be filed no later than 14 days after entry of judgment. Rule 54(d)(2)(B)(i), Fed. R. Civ. P. The motion must specify the judgment and the statute, rule, or other grounds entitling the movant to the award. Rule 54(d)(2)(B)(ii), Fed. R. Civ. P.; Dist. Idaho Loc. Civ. R. 54.2. The motion must also state the amount sought or provide a fair estimate of it. Rule 54(d)(2)(B)(iii), Fed. R. Civ. P.

Claims for attorney fees are not routine items of costs and will only be allowed upon an order of the Court after such fact-finding process as the judge orders. Dist. Idaho Loc. Civ. R. 54.2. The motion must also be supported by an affidavit of counsel to set forth dates, services rendered, hourly rates, hours expended, a statement of attorney fee contract, and any other statement upon which the Court might rely in determining the award. Dist. Idaho Loc. Civ. R. 54.2.

Under 15 U.S.C. § 26, if the plaintiff substantially prevails, the court shall award the cost of suit, including attorney fees, to plaintiff. Similarly, under Idaho Code § 48-113, private plaintiffs are allowed reasonable costs and attorney fees as determined by the court.

B. AN AWARD OF ATTORNEY FEES IS MANDATORY FOR SUCCESSFUL PURSUIT OF A SECTION 7 CLAYTON ACT VIOLATION.

The private Plaintiffs, including TVH, brought suit against Defendants for violation of Section 7 of the Clayton Act. As a remedy, TVH sought injunctive relief. Section 16 of the Clayton Act, codified at 15 U.S.C. § 26, provides for a private cause of action for injunctive relief as a result of anti-trust violations. 15 U.S.C. § 26 states that any person, firm, corporation,

or association has the right to sue for injunctive relief against threatened loss or damage by a violation of the antitrust laws, including Section 7 of the Clayton Act, codified at 15 U.S.C. § 18. In any action under 15 U.S.C. § 26 “in which the plaintiff substantially prevails, the court shall award the cost of suit, including a reasonable attorney's fee, to such plaintiff.” 15 U.S.C. § 26 (emphasis added). It is within the discretion of the trial court to determine what is reasonable. *See, e.g., Hasbrouck v. Texaco, Inc.*, 879 F.2d 632, 635 (9th Cir. 1989); *United States Football League v. Nat'l Football League*, 704 F. Supp. 480 (S.D.N.Y. 1989).

The private Plaintiffs also brought suit under Idaho Code §§ 48-104 and 48-106 for violations of the Idaho Competition Act. Under Idaho Code § 48-113, private plaintiffs are allowed reasonable attorney fees as determined by the court.

1. TVH “Substantially” Prevailed Against Defendants.

“Generally, the prevailing party is the one who successfully prosecutes the action or successfully defends against it, prevails on the merits of the main issue, and the one in whose favor the decision or verdict is rendered and judgment entered.” Dist. Idaho Loc. Civ. R. 54.1(b). A prevailing party is a party who “received judgment on the merits, or obtained a court-ordered consent decree.” *Buckhannon Board & Care Home, Inc. v. West Virginia Dept. of Health & Human Res.*, 532 U.S. 598, 605 (2001). There must be a causal relationship between the litigation sought and the potential outcome realized for a plaintiff to have substantially prevailed. *Amer. Constitutional Party v. Munro*, 650 F.2d 184 (9th Cir. 1981).

TVH is a prevailing party in this case as evidenced by the judgment entered on the merits and against Defendants. (Dkt. 471) The injunctive relief sought by private Plaintiffs, including TVH, in their Complaint was granted. In its Memorandum Decision and Order and Findings of Fact and Conclusions of Law, the Court stated it “finds for the plaintiffs.” (Dkt 463, pg. 1; Dkt

464, pg. 1) In its statement, the Court did not attempt to distinguish among Plaintiffs. The Court also ordered that “the Acquisition must be unwound.” (Dkt. 463, pg. 3) The Judgment entered herein states that “St. Luke’s is permanently enjoined from acquiring the Saltzer Medical Group.” (Dkt. 471, pg. 2) As required under *Munro*, a causal relationship exists between the litigation the private Plaintiffs sought and the potential outcome realized against Defendants. In accordance with 15 U.S.C. 26, TVH has substantially prevailed in its private action for injunctive relief against Defendants and should be awarded its attorney fees and non-taxable costs in the amount of \$459,102.35.

2. That The Court Did Not Address The Other Relevant Markets Does Not Diminish TVH’s Overall Success.

The fact that the Court did not find a need to reach all the additional issues raised by the private Plaintiffs with regard to additional relevant markets does not in any way reduce the fees which should be awarded to TVH under two principal legal theories. Fees should not be reduced where, as here, excellent results are obtained in a case. *See Hensley v. Eckerhart*, 461 U.S. 424 (1983). In addition, where claims arise out of a common core of facts, a request for attorneys’ fees should not be divided on a claim-by-claim basis. *Id.*

The Supreme Court’s decision in *Hensley v. Eckerhart*, 461 U.S. 424 (1983), makes clear that where excellent results are obtained in a case, the fact that the Court did not “reach certain grounds is not a sufficient reason for reducing a fee. The result is what matters.” 461 U.S. at 435. The Supreme Court also held that “[w]here a lawsuit consists of related claims, a plaintiff who has won substantial relief should not have his attorney’s fee reduced simply because the district court did not adopt each contention raised.” 461 U.S. at 440. That is because “[w]here a plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee. In

these circumstances, the fee award should not be reduced simply because the plaintiff failed to prevail on every contention raised in the lawsuit.” *Id.*

The *Hensley* court did state that “[a] reduced fee award is appropriate but [only] if the relief, however significant, is limited in comparison to the scope of the litigation as a whole.” *Id.* But that was not at all the case here. The primary relief requested, divestiture, was obtained.

The Supreme Court’s words apply to this case. The Court did not find it necessary to reach the private Plaintiffs’ evidence of effects on alternative markets, though it did address, and rely upon, the evidence on referrals. Of course, since the parties did not know in advance that this would be the case, they needed to present such evidence, all of which supported the divestiture remedy. Under the controlling rulings of the Supreme Court, this should not diminish the fee award here in any respect.

The same conclusion is supported when considering the common core of facts and related legal theories involved in this action.

If the plaintiff’s claims for relief ... involve a common core of facts or are based on related legal theories and much of counsel’s time is devoted generally to the litigation as a whole, making it difficult to divide the hours expended on a claim-by-claim basis such lawsuit cannot be viewed as a series of discrete claims. In that situation a plaintiff who has won substantial relief should not have his attorney’s fees reduced simply because the court did not adopted each contention raised.

Goff v. Washington County, No. CV-03-268-S-MHW, 2006 U.S. Dist. LEXIS 27134 at *9 (D. Idaho, April 24, 2006) (citing *Hensley v. Eckerhart*, 461 U.S. 424, 435, 440 (1983), internal quotations omitted)).

This principle establishes that the private Plaintiffs’ attorney fees should be recoverable in full. The private Plaintiffs’ claims certainly arose out of the same “common core of facts,” the acquisition of Saltzer Medical Group by St. Luke’s. There were also claims based on “related

legal theories,” theories under the antitrust laws. Therefore, there is no basis for dividing the attorney fees on a claim-by-claim basis.

Finally, one of the core issues under the private Plaintiffs’ claims were the arguments regarding the loss of referrals as a result of Saltzer acquisition. The Court clearly relied upon those arguments, and found for the private Plaintiffs on them.

C. TVH’S ATTORNEY FEES AND NON-TAXABLE COSTS ARE REASONABLE AND NECESSARILY INCURRED AND SHOULD BE AWARDED IN FULL.

1. Attorney Fees.

Since attorney fees are allowed for claims related to violation of Section 7 of the Clayton Act, the Court is required to calculate the “lodestar figure” and determine whether the figure should be enhanced or reduced. *Scentsy, Inc. v. B.R. Chase, LLC*, No. 1:11-CV-00249-BLW, 2013 U.S. Dist. LEXIS 122812 at *12 (D. Idaho, Aug. 26, 2013) (citing *Fischer v. SJB – P.D. Inc.*, 214 F.3d 1115, 1119 (9th Cir. 2000) and *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975)); *Alliance for Property Rights & Fiscal Responsibility v. City of Idaho Falls*, No. 4:12-cv-146-BLW, 2013 U.S. Dist. LEXIS 20141 at *13 (D. Idaho, Feb. 12, 2013). In calculating the lodestar figure, the Court must multiply the number of hours reasonably spent on the litigation by a reasonable hourly rate. *Id.* (citing *Fischer v. SJB – P.D. Inc.*, 214 F.3d 1115, 1119 (9th Cir. 2000). Factors to be considered in the lodestar calculation include 1) time limitations imposed by the client or circumstances, 2) amount involved and results obtained, 3) experience, reputation, and ability of attorneys, 4) undesirability of the case, 5) nature and length of professional relationship with the client, and 6) awards in similar cases. *Id.* (citing *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975)). The lodestar amount is presumptively the reasonable fee amount. *Alliance for Property Rights & Fiscal Responsibility*

v. City of Idaho Falls, No. 4:12-cv-146-BLW, 2013 U.S. Dist. LEXIS 20141 at *16 (D. Idaho, Feb. 12, 2013).

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 Apr. 16, 2012). 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.

The attorney fees incurred in bringing this motion for fees and costs 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). *See also United States Football League v. Nat’l Football League*, 704 F. Supp. at 480 (finding that prevailing party in a Clayton Act case is entitled to amount spent on fee petition).

a. The hours billed to TVH for attorney fees are reasonable.

The result obtained and the extent of success are used to determine a reasonable number of hours in calculating the lodestar figure. *See Alliance for Property Rights & Fiscal Responsibility v. City of Idaho Falls*, No. 4:12-cv-146-BLW, 2013 U.S. Dist. LEXIS 20141 (D. Idaho, Feb. 12, 2013). The complete divestiture ordered in this case supports the reasonableness of the number of hours billed to achieve the result.

The time spent on TVH’s behalf is reasonable because during the majority of the case TVH had only two attorneys working on the case at any given time, namely Raymond D. Powers and Portia L. Rauer. Mr. Powers billed 940.4 hours and Ms. Rauer billed 644 hours. Powers Aff. ¶¶ 7 and 20.

Four other attorneys provided assistance on an as needed basis and billed a total of 134.7 hours. During the intense discovery phase, Mark J. Orlor and Joyce A. Hemmer assisted when volumes of documents were being reviewed and analyzed for production and privilege. Once document review and privilege logs were completed Mr. Orlor and Ms. Hemmer no longer worked on the case. Mr. Orlor billed 78.8 hours; Ms. Hemmer billed 47.8 hours. Attorneys W. Dustin Charters and Zachary Thompson also provided limited assistance with legal research. Mr. Charters billed 6.5 hours; Mr. Thompson billed 1.6 hours. Powers Aff. ¶¶ 6, 7 and 20. Powers Tolman Farley billed 1719.1 hours for all attorney timekeepers.

Where appropriate, TVH joined co-Plaintiff St. Alphonsus' motions and oppositions, instead of doing its own research and writing. St. Alphonsus also took the "laboring oar" in the case in terms of experts and depositions. Counsel for TVH did not attend all of the depositions taken in this case and had limited involvement in assisting with expert disclosures. In order to avoid a duplication of efforts, TVH provided a supporting role, unless there were issues solely related to TVH. To adequately represent TVH, however, TVH's counsel was required to stay abreast of all of the issues occurring throughout the litigation. Powers Aff. ¶¶ 9 and 14.

TVH was represented by only one attorney at trial and relied upon co-Plaintiffs' trial support team instead of his own staff. Powers Aff. ¶ 15.

Counsel for TVH did not bill TVH for all of its services and not all of its billed services were submitted in this attorney fee motion. Counsel for TVH also relied on non-timekeeping staff to perform ministerial tasks. Counsel for TVH also relied upon paralegals where appropriate. Powers Aff. ¶¶ 13 and 14.

As set forth on the spreadsheet in Exhibit A to the Affidavit of Raymond D. Powers, some of the entries for billed services were itemized line-by-line for each service performed;

other entries appear in a quasi-block-billed format with the amount of time spent for each service shown parenthetically after each task. An example of the quasi-block-billed format follows:

				Receive and review correspondence from St. Luke's counsel Regarding acceptance of service of subpoenas for physicians and entities (.4); Review St. Al's first set of interrogatories to St. Luke's (.6); Review third St. Al's request for production to St. Luke's (.6); Review and revise draft of objections to St. Luke's requests for production (.6);
\$225.00	2.2	\$	495.00	

While the format suggests a strictly block-billed entry, as seen from the example, Court and counsel can easily determine the amount of time spent on each specific service by referencing the parenthetical after each service.

The 1719.1 hours billed by Powers Tolman Farley attorneys are reasonable given the novelty and difficulty of the antitrust issues involved and the skill required to perform the legal services. Furthermore, the fact that this case was on the “fast track” reduced the likelihood that time and resources would be squandered; Plaintiffs did not have the luxury of time to overanalyze or overprepare the case. It would not be unusual for a case of this magnitude to take up to three years for discovery before going to trial; the present case was prepared in less than a year.

TVH’s competitive position as an outpatient surgery center was in jeopardy as a result of the transaction, which necessitated the expense of pursuing its case against Defendants. Mr. Powers’ presence in the litigation was critical to TVH and kept the hours billed to a minimum because of Mr. Powers’ institutional knowledge of TVH and his vast experience within the Treasure Valley medical community. TVH should recover its attorney fees because of the excellent results obtained against Defendants, which included complete and full divestiture.

The hours billed are not excessive, redundant, or otherwise unnecessary. *See Hensley*, 461 U.S. at 434.

It is also worth noting the numerous instances where the Court congratulated the attorneys for working so well together, which is evidence that the hours billed could have been substantially higher.

As set forth in the Affidavit of Raymond D. Powers in support hereof, the hours spent on TVH's behalf were necessary and reasonably incurred in pursuing this action, especially in light of the hours spent by co-Plaintiffs.

b. The rates charged by TVH's counsel are reasonable.

To determine a reasonable hourly rate, the court looks to hourly rates prevailing in the relevant legal community for similar work performed by attorneys of comparable skill, experience, and reputation. *Scentsy, Inc. v. B.R. Chase, LLC*, No. 1:11-CV-00249-BLW, 2013 U.S. Dist. LEXIS 122812 at *13 (D. Idaho, August 26, 2013). The relevant legal community is generally the forum in which the district court sits. *Id.* As set forth in the Affidavit of Raymond D. Powers, the prevailing hourly rates in Boise, Idaho, for similar work performed by attorneys of comparable skill, experience, and reputation include charges ranging between \$175 and \$225 per hour.² The following rates reflect rates charged in Boise, Idaho for complex civil litigation:

Raymond D. Powers - \$225
Portia L. Rauer - \$175³
Mark J. Orlor - \$175
Joyce A. Hemmer - \$175
Dustin Charters - \$175
Zachary Thompson - \$175

² This Court in *Scentsy, Inc. v. B.R. Chase, LLC*, No. 1:11-CV-00249-BLW, 2013 U.S. Dist. LEXIS 122812 (D. Idaho, August 26, 2013) found attorney fees ranging between \$175 and \$390 to be reasonable for Boise, Idaho.

³ The fees charged for Ms. Rauer's services were reduced from \$225 to \$175 beginning the month of February 2013. *See Aff. of Raymond Powers* ¶ 18.

Because the hours spent and hourly rate charged are reasonable, the Court is free to perform the lodestar calculation without adjustment. TVH requests that its attorney fees be awarded in the amount of \$348,977.50.

2. Non-Taxable Costs.⁴

A prevailing party “may recover as part of the award of attorney’s fees those out-of-pocket expenses that ‘would normally be charged to a fee paying client.’” *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (holding that reasonable expenses in excess of taxable costs may be proper). A prevailing party is entitled “to recover non-taxable costs where a statute authorizes an award of reasonable attorney’s fees to a prevailing party.” *Grove v. Wells Fargo Fin. California, Inc.*, 606 F.3d 577, 580 (9th Cir. 2010). Idaho Code § 48-113 provides that any person injured through violation of Idaho’s Competition Act may “bring an action for injunctive relief, damages, and, as determined by the court, reasonable costs and attorney’s fees.” Therefore, TVH should be awarded its out-of-pocket expenses or non-taxable costs.

TVH incurred the following out-of-pocket expenses which should be allowed:

Paralegal services – \$98,158.50
Long distance telephone charges – \$227.63
Photocopy costs – \$4,376.05
Messenger services – \$171.15
Computer-based legal research – \$293.75
Express postage charges – \$1,006.47
Electronic discovery conversion-related fees – \$5,844.00
PACER fees – \$47.30

TOTAL – \$110,124.85

The United States Supreme Court has supported the allowance of paralegal fees. *See Missouri v. Jenkins*, 491 U.S. 274 (1989). Likewise, trial judges in this jurisdiction have also

⁴ TVH has claimed taxable costs in the amount of \$3,100.22 for deposition transcripts as set forth in its Bill of Costs and supporting Certificate of Counsel, filed herewith.

awarded paralegal fees as allowable costs. *See, e.g. Scentsy, Inc. v. B.R. Chase, LLC*, No. 1:11-CV-00249-BLW, 2013 U.S. Dist. LEXIS 122812 (D. Idaho, Aug. 26, 2013); *Goff v. Washington County*, No. CV-03-268-S-MHW, 2006 U.S. Dist. LEXIS 27134 (D. Idaho, April 24, 2006). As set forth in the Affidavit of Raymond D. Powers, the paralegal fees for Jennifer L. Schwartz, Ann K. Harris, Heather Rice, and Kerry Funkhouser billed at \$110 per hour totaling \$98,158.50 are reasonable, necessarily incurred, and are consistent with market rates charged for such paralegal services by those with similar training and experience. It is a common practice for paralegal services to be billed separately. Powers Aff. ¶ 25.

The computer-based legal research charges for Lexis totaling \$293.75 are reasonable and necessarily incurred. The Ninth Circuit has held that computer-based legal research costs may be recovered if separate billing for such expenses is the prevailing practice in the local community. *Trustees of Const. Indus. & Laborers health & Welfare Trust v. Redland Ins. Co.*, 460 F.3d 1253, 1258-59 (9th Cir. 2006). In *Scentsy, Inc. v. B.R. Chase, LLC*, No. 1:11-CV-00249-BLW, 2013 U.S. Dist. LEXIS 122812 (D. Idaho, Aug. 26, 2013) this Court found that computer-based legal research is recoverable.

In *Goff v. Washington County*, No. CV-03-268-S-MHW, 2006 U.S. Dist. LEXIS 27134 at *19 (D. Idaho, April 24, 2006) the court awarded long distance phone charges, photocopies, courier fees, and miscellaneous expenses. Likewise, TVH's similar charges should also be awarded since they were reasonably and necessarily incurred and are charges that are typically billed separately to clients.

The charges incurred for express postal service, electronic discovery-related charges, and charges paid to the Federal Court are also reasonable and were necessarily incurred. Because this case was on the "fast track" and being litigated under an electronic records order, expedited

services and document conversion were an absolute necessity to bring this case to trial in such a short amount of time. Again, this Court in *Scentsy, Inc. v. B.R. Chase, LLC* acknowledged that e-discovery costs are reasonable and recoverable if they were not accrued merely for the convenience of counsel. No. 1:11-CV-00249-BLW, 2013 U.S. Dist. LEXIS 122812 at * 19-20 (D. Idaho, Aug. 26, 2013) (citing *Tibble v. Edison Int'l*, CV 07-5359 SVW AGRX, 2011 U.S. Dist. LEXIS 94995 (C.D. Cal. Aug. 22, 2011) *aff'd* 11-56628, 520 Fed. Appx. 499, 2013 U.S. App. LEXIS 5663 (9th Cir. Mar. 21, 2013); *Race Tires Am., Inc. v. Hoosier Racing Tire Corp.*, 674 F.3d 158, 167 (3d Cir. 2012); *Hecker v. Deere & Co.*, 556 F.3d 575, 591 (7th Cir. 2009)).

All of the above costs and out-of-pocket expenses are recoverable and are generally charged and paid by the client. Furthermore, none of the costs and out-of-pocket expenses was for mere convenience; thus, the non-taxable costs should be awarded. Powers Aff. ¶¶ 21-25.

CONCLUSION

Based on the foregoing arguments and the Affidavit of Raymond D. Powers filed in support hereof, TVH respectfully requests that the Court award its attorney fees in the amount of \$348,977.50 and award its non-taxable costs in the amount of \$110,124.85, for a total award of \$459,102.35.

DATED this 14th day of March, 2014.

POWERS TOLMAN FARLEY, PLLC

By /s/ Raymond D. Powers
Raymond D. Powers - Of the Firm
Attorney for Treasure Valley Hospital

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14th day of March, 2014, the foregoing document was:

___ Electronically filed 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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/s/Raymond D. Powers