

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 Case)

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

JOINT MOTION FOR ENTRY OF ORDER IMPLEMENTING DIVESTITURE

All Plaintiffs and Defendants, by and through their counsel, move this Court to enter the Order to Maintain Assets and Appointing a Monitor and a Divestiture Trustee attached hereto as Exhibit A ("Proposed Order"), and in support thereof state as follows:

1. On February 28, 2014, this Court entered a Judgment requiring that St. Luke's "shall fully divest itself of Saltzer's physicians and assets and take any further action needed to unwind the Acquisition."

2. On July 13, 2015, this Court ordered expedited discovery to permit Plaintiffs to investigate and access Defendants' plans to effectuate this Court's Judgment.

3. As a result of that discovery, and further discussions between the parties, the parties have agreed to the process described in the Proposed Order.

4. The Proposed Order provides for a process to divest Saltzer Medical Group in way that would restore Saltzer as an independent, viable competitor. Pursuant to the Proposed Order, the divestiture process will be undertaken by a Court-appointed Divestiture Trustee, with the input of St. Luke's and Saltzer and approval by the Court and Government Plaintiffs. The Proposed Order provides that James Moloney, a Managing Director and Co-Head of Mergers and Acquisitions of Cain Brothers, will serve as Divestiture Trustee. Mr. Moloney has extensive experience in the facilitation of health care transactions. Mr. Moloney's resume is attached hereto as Exhibit B. All parties have agreed to Mr. Moloney's selection as Divestiture Trustee. St. Luke's has reached an agreement to retain and compensate Mr. Moloney's firm, which has been reviewed by Government Plaintiffs.

5. The parties also agree that it is appropriate for a Monitor to be appointed to assure that Saltzer remains an independent, viable entity for the period of time during which the divestiture can be implemented. The Proposed Order provides that Richard Shermer will serve as the Monitor. Mr. Shermer has extensive experience in this role, including serving as monitor for the divestiture of more than 100 medical clinics. Mr. Shermer's resume is attached hereto as Exhibit C. All parties have agreed to Mr. Shermer's selection as Monitor. St. Luke's has reached

an agreement to retain and compensate Mr. Shermer's firm, which has been reviewed by Government Plaintiffs.

6. FTC orders routinely include provisions appointing a Monitor and providing for the appointment of a divestiture trustee.¹

Wherefore, the undersigned parties request this Court to enter the Order to Maintain Assets and Approving a Monitor and a Trustee.

¹ Several Courts of Appeal have affirmed such FTC divestiture orders in recent litigated cases. *See Promedica Health Sys., Inc. v. FTC*, 749 F.3d 559, 572-73 (6th Cir. 2014), *cert. denied*, 135 S.Ct. 2049 (2015); *Polypore Int'l, Inc. v. FTC*, 686 F.3d 1208, 1218-19 (11th Cir. 2012), *cert. denied*, 133 S.Ct. 2853 (2013); *Chicago Bridge & Iron Co. v. FTC*, 534 F.3d 410, 441-42 (5th Cir. 2008); *see also United States v. Louisiana-Pacific Corp.*, 569 F.Supp. 1138, 1139-40 (D. Ore. 1983) (appointing divestiture trustee).

DATED this 3rd day of December, 2015.

/s/ Tom Greene

J. Thomas Greene
Michael J. Perry
Attorneys
Federal Trade Commission
Bureau of Competition
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580
Tel: 415-848-5196
tgreene2@ftc.gov
mperry@ftc.gov

Deborah L. Feinstein, Director
Bureau of Competition
Federal Trade Commission

Charles Harwood, Director
Northwest Region
Federal Trade Commission

Jonathan E. Nuechterlein, General Counsel
Joel Marcus-Kurn, Asst. General Counsel
Federal Trade Commission

*Counsel for Plaintiff Federal Trade
Commission*

/s/ Brett DeLange

Lawrence G. Wasden, Attorney General
Brett T. DeLange
Chief, Consumer Protection Division
Office of the Attorney General
State of Idaho
700 West Jefferson Street
Boise, ID 83720
Tel: 208-334-2400
brett.delange@ag.idaho.gov

Counsel for Plaintiff State of Idaho

/s/ Keely Duke

Keely E. Duke
Duke Scanlan Hall PLLC
1087 West River Street, Suite 300
Boise, ID 83702
Tel: 208-342-3310
ked@dukescanlan.com

David A. Ettinger
Lara Festco Phillip
Honigman Miller Schwartz and Cohn LLP
660 Woodward Avenue
2290 First National Building
Detroit, MI 48226-3506
Tel: 313-465-7368
dettinger@honigman.com
lara.phillip@honigman.com

*Counsel for Plaintiffs Saint Alphonsus
Medical Center - Nampa, Inc.; Saint
Alphonsus Health System, Inc.; and Saint
Alphonsus Regional Medical Center, Inc.*

/s/ Ray Powers

Raymond D. Powers
Portia L. Rauer
Powers Tolman Farley, PLLC
345 Bobwhite Ct., #150
Boise, ID 83706
Tel: 208-577-5100
rdp@powerstolman.com
plr@powerstolman.com

*Counsel for Plaintiff Treasure Valley
Hospital Limited Partnership*

/s/ Pat Deady

John P. Marren
Patrick E. Deady
Thomas J. Babbo
Hogan Marren Babbo & Rose, Ltd.
321 N. Clark Street, Suite 1301
Chicago, IL 60654
T: (312) 946-1800
F: (312) 946-9818

/s/ Brian Julian

Brian K. Julian
Anderson, Julian & Hull LLP
C.W. Moore Plaza
250 S. Fifth St., Ste. 700
P.O. Box 7426
Boise, ID 83707
T: (208) 344-5800
F: (208) 344-5510

*Counsel for Saltzer Medical Group, P.A.
And St. Luke's Regional Medical Center, Ltd.*

/s/ Walt Sinclair

J. Walter Sinclair
Brian C. Wonderlich
Holland & Hart LLP
800 West Main Street
Ste. 1750
Boise, ID 83702
T: (208) 383-3928
F: (208) 343-8869

/s/ Scott Stein

Jack R. Bierig
Scott D. Stein
Charles K. Schafer
Tacy F. Flint
Sidley Austin LLP
One South Dearborn
Chicago, IL 60603
T: (312) 853-7000
F: (312) 853-7036

Counsel for St. Luke's Health System, Ltd.