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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)** **ST. LUKE'S RESPONSE TO GOVERNMENT PLAINTIFFS' MOTION REGARDING IMPLMENTATION OF JULY 3, 2014 COURT ORDER (Dkt. 513) AND PARTIAL OPPOSITION TO SAINT ALPHONSUS'S RESPONSE THERETO (Dkt. 518)**
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 St. Luke's Health System, Ltd., and St. Luke's Regional Medical Center, Ltd. (collectively, "St. Luke's") hereby respond to the Government Plaintiffs' Motion Regarding Implementation of Court's July 3, 2014 Order Concerning Attorney Eyes Only Designations (Docket Number 513), and partially oppose the "response" thereto (Docket Number 518) filed by Saint Alphonsus Medical Center - Nampa, Inc., Saint Alphonsus Health System, Inc., and Saint Alphonsus Regional Medical Center, Inc. (collectively, "Saint Al's").

A. Response to Government Plaintiffs' Motion Regarding Implementation of Court's July 3, 2014 Order Concerning Attorney Eyes Only Designations.

St. Luke's concurs in the relief sought by the government plaintiffs. Based upon the Court's earlier rulings on AEO designations, however, St. Luke's does not seek this Court's review of any of the trial or deposition testimony identified in the government plaintiffs' motion. Rather, St. Luke's will withdraw those designations and publicly file – or coordinate with the government plaintiffs for the public filing of – those transcript pages/lines in accordance with the schedule ultimately set by this Court.

B. Partial Opposition to Saint Al's Response to Government Plaintiffs' Motion.

In its response to the filing by the government plaintiffs, Saint Al's withdrew its designations with respect to a number of exhibits and pages/lines of trial and deposition testimony. However, Saint Al's also seeks to keep certain materials under seal that St. Luke's respectfully submits cannot legitimately be kept from the public. Each of these materials, and the reasons that St. Luke's believes that they should not be withheld from public view, are set forth below:

- Trial Transcript 767:4-6 – This testimony from former Saltzer (now Saint Alphonsus Medical Group ("SAMG")) employee, Nancy Powell, does nothing more than compare in general terms the competing offers made by St. Luke's and

SAMG to the Saltzer physicians. No confidential financial information, and nothing else sensitive to these physicians or any party, is revealed in this general discussion of the differences or similarities between the two sets of offers. There is no legitimate basis for keeping this information from the public.[1]

- Trial Transcript 1269:1-1273:2 – This four-page section of the trial transcript contains some information that is properly kept confidential. However, it also contains information which there is no compelling reason to keep from the public. Only the legitimate confidential information should be redacted. That information is limited to *Page 1269, lines 1-19.* Those lines contain certain confidential financial information regarding Saint Al's relationship with Micron and are, therefore, appropriately redacted.

- By contrast, the remainder of the material on these pages should not properly be kept from public view. More specifically,

    - *Page 1269, line 20 – Page 1272, line 5* involves testimony regarding whether or not Saltzer physicians – or other physicians associated with St. Luke's – would be invited or permitted to join the Saint Alphonsus Health Alliance. This testimony is highly relevant to evaluating certain of Plaintiffs' claims regarding the purported negative effects of a Saltzer-St. Luke's affiliation. There is no legitimate basis for keeping this information from the public.

    - *Page 1272, line 6 – Page 1273, line 2* contains testimony relating to whether or not St. Luke's has competed to contract with Micron and whether independent physicians have participated in the quality incentives under Saint Al's contract with Micron. These issues are highly relevant to Plaintiffs' claims and Defendants' defenses thereto. There is no legitimate basis for keeping this testimony from the public.

[1] St. Luke's notes that this Court ordered trial transcript pages/lines 767:24-768:22 to be redacted as containing a "[d]iscussion of physician compensation." (7.3.14 Order at 28.) However, that testimony similarly does not discuss Saltzer physician compensation in any absolute terms, but – rather – only how the compensation offered by Saint Al's compared to the offer made by St. Luke's. St. Luke's thus believes these lines should not be redacted for the same reasons.

CONCLUSION

For the reasons set forth above, St. Luke's withdraws its designations over those designations identified in the government plaintiffs' motion as having not yet been ruled upon by this Court. St. Luke's further requests that this Court reject Saint Al's request to maintain under seal the exhibits and testimony described herein that is relevant to the claims and defenses in this litigation and does not reveal anything confidential or proprietary to any party.

Respectfully submitted,

s/ J. Walter Sinclair

Dated: August 5, 2014

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 5, 2014, I filed the foregoing **St. Luke's Response to Government Plaintiffs' Motion Regarding Implementation of July 3, 2014 Court Order (Dkt. 513) and Partial Opposition to Saint Alphonsus's Response Thereto (Dkt. 518)** 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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