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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

UNITED STATES OF AMERICA and the)	
)	
STATE OF IDAHO,)	
)	
Plaintiffs,)	Civil Case No. 10-268-S.EJL
)	
v.)	
)	UNITED STATES' MOTION AND
IDAHO ORTHOPAEDIC SOCIETY,)	SUPPORTING MEMORANDUM
TIMOTHY DOERR,)	TO ENTER FINAL JUDGMENT
JEFFREY HESSING,)	
IDAHO SPORTS MEDICINE INSTITUTE,)	
JOHN KLOSS,)	
DAVID LAMEY, and)	
TROY WATKINS,)	
)	
Defendants.)	
_____)	

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) ("APPA"), plaintiff United States of America ("United States") moves for entry of the proposed Final Judgment filed in this civil antitrust proceeding. The proposed Final Judgment may be entered at this time without further hearing if the Court determines that entry is in the public interest. The Competitive Impact Statement ("CIS"), filed in this matter on May 28,

2010, explains why entry of the proposed Final Judgment would be in the public interest. The United States is filing simultaneously with this Motion and Memorandum, a Certificate of Compliance setting forth the steps taken by the parties to comply with all applicable provisions of the APPA and certifying that the statutory waiting period has expired.

I. Background

On May 28, 2010, the United States and the State of Idaho filed a civil antitrust Complaint alleging that the Defendants Idaho Orthopedic Society (“IOS”), Dr. Timothy Doerr, Dr. Jeffrey Hessing, Idaho Sports Medicine Institute (“ISMI”), Dr. John Kloss, Dr. David Lamey, and Dr. Troy Watkins violated Section 1 of the Sherman Act and Idaho Code Section 48-101 *et seq.* of the Idaho Competition Act by entering into a group boycott with other conspiring orthopedists to force the Idaho Industrial Commission to increase the rates at which orthopedists were reimbursed for treating injured workers. Defendants’ group boycott resulted in a shortage of orthopedists in the Boise, Idaho, area willing to treat workers’ compensation patients and caused the Idaho Industrial Commission to increase rates for orthopedic services substantially above levels set just a year earlier.

The Complaint also alleges that, in a second conspiracy, Defendants – except for Defendant Lamey – and other conspirators agreed to threaten to terminate their contracts with Blue Cross of Idaho (“BCI”) to force it to offer better contract terms to orthopedists. Their collusion caused BCI to offer orthopedists more favorable contract terms than BCI would have offered but for the participating Defendants’ group boycott of BCI.

At the same time the Complaint was filed, the United States and the State of Idaho filed a Stipulation and a proposed Final Judgment, which would enjoin the Defendants from agreeing

with competing physicians to threaten to terminate contracts with payers or deny medical care to patients. The proposed Final Judgment also enjoins the Defendants from encouraging or engaging in any agreement with competing physicians about any payer contract term or participation in any payer contract, and communicating with any competing physician about the acceptability of any proposed or existing payer contract or contract term. The proposed Final Judgment will prevent the recurrence of the violations alleged in the Complaint and preserve competition for patients and other purchasers of orthopedic services, including self-insured employers and health and workers' compensation insurers in the Boise, Idaho, area and elsewhere. The CIS more fully explains the proposed Final Judgment, the basis for the Complaint, and why entry of the proposed Final Judgment is in the public interest.

The Stipulation provides that the Court may enter the proposed Final Judgment after the completion of the procedures required by the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Compliance with the APPA

In compliance with the APPA, the United States filed the CIS with the Court on May 28, 2010; published the proposed Final Judgment and CIS in the *Federal Register* on June 7, 2010 (*see United States v. Idaho Orthopaedic Society, et. al.*, 75 Fed. Reg. 32210); and caused to be published summaries of the proposed Final Judgment and CIS, together with directions for the submission of written comments relating to the proposed Final Judgment, in the *Idaho Statesman* for seven days beginning on June 2, 2010, and ending on June 9, 2010, and the *Washington Post* for seven days beginning on June 20, 2010, and ending on June 26, 2010. After the completion

of these actions, the APPA requires a sixty-day period for the submission of public comments on the proposed Final Judgment. *See* 15 U.S.C. §16(b). The sixty-day period for public comments ended on August 25, 2010, and the United States received no comments. As further explained in the Certificate of Compliance, all requirements of the APPA have been satisfied. It is now appropriate for the Court to make the public-interest determination required by 15 U.S.C. § 16(e) and to enter the proposed Final Judgment.

III. Standard of Judicial Review

The APPA requires the Court to determine whether the proposed Final Judgment “is in the public interest” before entering it. 15 U.S.C. § 16(e)(1). In making that determination in accordance with the statute, the court shall consider:

- (A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
- (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e)(1)(A)-(B).

In the CIS, the United States explained the meaning and proper application of the public-interest standard under the APPA and now incorporates those statements herein by reference.

The public, including affected competitors and customers, has had the opportunity to comment on the proposed Final Judgment as required by law, and no comments have been received. The

proposed settlement is consistent with the public interest.

IV. Conclusion

For the reasons set forth in this Motion and Memorandum and in the CIS, the Court should find that the proposed Final Judgment is in the public interest and should enter the Final Judgment without further hearings. The United States respectfully requests that the Final Judgment attached hereto be entered as soon as possible.

Dated: August 26, 2010

Respectfully submitted,

FOR PLAINTIFF
UNITED STATES OF AMERICA

/s/ _____
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CERTIFICATE OF SERVICE

I hereby certify that on August 26, 2010, I filed the foregoing United States' Motion and Supporting Memorandum To Enter Final Judgment electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

For Defendants Idaho Orthopaedic Society, Timothy Doerr, Jeffrey Hessing, Idaho Sports Medicine Institute, John Kloss, and Troy Watkins:

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