

Respondents' motion to stay should therefore be denied.

ARGUMENT

I. A Pending Preliminary Injunction Proceeding Does not Constitute “Good Cause” for a Stay of the Part 3 Proceeding.

The Part 3 Rules, as amended in 2009, establish a schedule for administrative hearings. Under Rule 3.11(b)(4), the administrative hearing is scheduled five months after the issuance of the complaint in any case involving a merger which the Commission has sought to preliminarily enjoin under §13(b) of the FTC Act, 15 U.S.C. § 53(b). Rule 3.41(b) expressly provides that, “The hearing will take place on the date specified in the notice accompanying the complaint pursuant to § 3.11(b)(4)” And, Rule 3.41(f) provides that Part 3 proceedings will not be stayed due to the pendency of a collateral federal court action unless “the Commission *for good cause* so directs” (emphasis added).

This five-month rule was part of a “comprehensive and systematic” set of 2009 revisions to the Part 3 Rules to establish “tighter time limits” for Part 3 litigation.² As part of this effort, the 2009 Amendments specifically deleted the provision that, “the ALJ may stay the administrative proceeding until resolution of the collateral federal court proceeding.”³ The applicable rules now only permit the Commission to issue a stay on a showing of “good cause.”

Since these 2009 Amendments were adopted, the Commission has regularly denied unilateral requests of other respondents to stay Part 3 proceedings pending a decision in a parallel federal court action. Just last year, in *In re Advocate Health Care Network*, Docket No. 9369, the respondents sought a stay of the Part 3 hearing until 60 days after the federal court had

² 74 Fed. Reg. 1807 (Oct. 7, 2008); *see generally* 73 Fed. Reg. 58832 (Oct. 7, 2008) (proposed rules); 74 Fed. Ref. 1804 (Jan. 13, 2009) (interim final rules).

³ *See* 16 C.F.R. § 3.51(a)(2008).

ruled on the preliminary injunction motion pending in federal court. The Commission denied that motion, explaining:

At this time, we see no conflict between the two proceedings, or any other reason that would justify staying the administrative hearing. Furthermore, as reflected in the Commission's rules, the Commission has made a commitment to move forward as expeditiously as possible with administrative hearings on the merits. *We therefore find that no good cause exists to grant Respondents' motion to stay.*⁴

Three days later, the Commission reached the same conclusion in *The Penn State Hershey Medical Center*, Docket No. 9368. There, the respondent sought a stay of the administrative hearing – without a stay of discovery or any other deadlines in the Part 3 proceeding – on the grounds that “the district court may not rule on the preliminary injunction request until after the administrative hearing begins. . . .” The Commission expressly rejected this argument, however, because “Respondents’ conjecture . . . is not a basis for delaying the administrative hearing.”⁵

The *Penn State* order denying a motion to stay is particularly instructive because Respondents’ motion here is also based on conjecture: when asked about the timing of an order on the preliminary injunction motion in the federal court proceeding, Magistrate Judge Senechal stated, “I would just be making up a date if I gave you one right now” and “I don’t know that I am going to be able to give you much guidance on that.”⁶ Respondents themselves – who have

⁴ *Advocate Health Care Network*, Docket No. 9369, Order Denying Motion to Stay the Administrative Hearing at 2, (March 18, 2016), available at <https://www.ftc.gov/system/files/documents/cases/581005.pdf> (emphasis added).

⁵ *The Penn State Hershey Medical Center*, Docket No. 9368, Order Denying Motion to Stay the Administrative Hearing, at 1-2 (March 21, 2016), available at <https://www.ftc.gov/system/files/documents/cases/160321pinnacleorder.pdf>.

⁶ Recording of Oct. 4 Status Conference. Respondents also state that without a stay, the FTC Revisions to Rules of Practice provide for an automatic withdrawal or automatic stay if the district court denies the preliminary injunction. In fact, the Rules only provide for an automatic stay or withdrawal if Respondents apply for a stay or dismissal *and* Complaint Counsel does not oppose the stay or dismissal. FTC Revisions to Rules of Practice, 80 Fed. Reg. 15,157, 15,158 (Mar. 23, 2015); *see also* Rule 3.26(c).

already indicated that they will appeal an adverse district court decision – acknowledge that, “the exact duration of the appeal process is unknowable”⁷

Finally, Respondents themselves are responsible for delaying the federal court proceeding, which will now occur only one month prior to the start of the administrative proceeding. After filing a Complaint for Temporary Restraining Order and Preliminary Injunction in the District of North Dakota on June 22, 2017, Complaint Counsel requested that the preliminary injunction proceeding start on September 27, 2017 to “facilitate resolution of the Plaintiffs’ forthcoming PI motion before the start of a parallel administrative proceeding on the merits.” Exhibit A (ECF No. 44, Plaintiffs’ Requested PI Schedule). Respondents, on the other hand, sought to delay the preliminary injunction proceeding until October 30, 2017, dismissing concerns that such a late date would conflict with the administrative proceeding. Exhibit B (ECF No. 45, Defendants Letter re PI Schedule) (“[A]s a practical matter in most FTC merger cases the issues (including appeals) are resolved in federal court and the administrative trial never occurs”). The federal court adopted Respondents’ proposed schedule, and the preliminary injunction hearing will begin on October 30, 2017. *See* Exhibit C (ECF No. 58, Preliminary Injunction CMSO).⁸ Having previously dismissed concerns about overlapping proceedings, Respondents can hardly raise those concerns now.

⁷ Respondents’ Motion to Stay at 3. In *Penn State*, the appeals process took three and a half months before the Third Circuit reversed and entered the preliminary injunction, and in *Advocate*, the appeals and remand process took eight and a half months before the Seventh Circuit reversed and the district court entered the preliminary injunction.

⁸ The CMSO specified a start date of October 31, 2017. However, the start of the preliminary injunction proceeding was moved to October 30, 2017 to accommodate courtroom availability in Bismarck. *See* Exhibit D (ECF No. 76, Order Setting Trial in Bismarck).

CONCLUSION

Respondents have failed to demonstrate the good cause—or indeed, *any* cause—necessary to justify a stay in this proceeding, as required by Rules 3.41(b) and 3.41(f). Absent such a demonstration, Respondents’ motion for stay of the Part 3 hearing should be denied.

Dated: October 12, 2017

Respectfully Submitted,

/s/ Thomas J. Dillickrath
Thomas J. Dillickrath
Kevin Hahm
Christopher Caputo
Melissa Hill
Federal Trade Commission
Bureau of Competition
600 Pennsylvania Avenue, NW
Washington, DC 20580
Telephone: (202) 326-3680
Facsimile: (202) 326-2286
Email: tdillickrath@ftc.gov
Email: khahm@ftc.gov
Email: ccaputo@ftc.gov
Email: mchill@ftc.gov

EXHIBIT A



Bureau of Competition
Mergers IV Division

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

The Honorable Alice R. Senechal
United States Magistrate Judge
United States District Court for the District of North Dakota
655 1st Avenue North, Suite 440
Fargo, ND 58102-4952

July 25, 2017

Re: *FTC and State of North Dakota v. Sanford Health, et al., 17-cv-133*

Dear Magistrate Judge Senechal:

On behalf of Plaintiffs Federal Trade Commission and the State of North Dakota, we write to set forth Plaintiffs' request for a preliminary injunction ("PI") hearing in the above-captioned proceeding in either Fargo or Bismarck¹ that (1) lasts no more than two days, and (2) begins no later than September 27, 2017. Plaintiffs' position allows both sides to present their arguments to this Court in order to facilitate resolution of the Plaintiffs' forthcoming PI motion before the start of a parallel administrative proceeding on the merits. Plaintiffs' proposed schedule is consistent with past PI proceedings brought by the FTC and state attorneys general. It conserves non-party resources and provides sufficient time for the parties to complete discovery on the limited issues in dispute.

The facts and issues before this Court are narrow and should not require more than two days of live testimony to resolve. The proposed merger presents competitive harm in four physician service markets, within a geographic market consisting of a four-county area surrounding Bismarck and Mandan where Defendants compete. Defendants do not dispute they are the two largest providers of each of the four relevant physician services in the relevant geographic area. Whether Defendants can overcome Plaintiffs' demonstration of a presumption of harm in the relevant markets is likely to turn on the resolution of only a limited set of issues.

Plaintiffs' proposed schedule provides a meaningful opportunity for all parties to present testimony and written and oral argument in support of their respective positions on the narrow issue presented: whether this Court should preliminarily enjoin the proposed transaction pending a full administrative trial on the merits scheduled to begin on November 28, 2017. The administrative trial will afford all parties a full opportunity to conduct fact and expert discovery, and to present a total of up to 210 hours of live witness testimony. As the court concluded in *FTC v. Penn State Hershey Med. Ctr.*, 838 F.3d 327 (3rd Cir. 2016), "[t]he purpose of Section 13(b) is to preserve the status quo and allow the FTC to adjudicate the anticompetitive effects of the proposed merger in the first instance." *Id.* at 352; *see also FTC v. National Tea Co.*, 603 F.2d 694, 696 (8th Cir. 1979).

As in prior Section 13(b) cases, this Court will have a robust evidentiary record on which to decide the important but focused issue of whether to preserve the *status quo* and competition between the Defendants by preliminarily enjoining the merger through the pendency of the administrative trial.

¹ Plaintiffs' preference is for the hearing to occur in Bismarck because potential witnesses, the Defendants, and Plaintiff State of North Dakota are located in Bismarck, but will appear in either Bismarck or Fargo based on the Court's decision.

This Court thus will be able to prevent interim consumer harm and preserves the Commission's ability to order effective relief should the merger be found unlawful. In addition to live hearing testimony, the record before this Court will include: (1) expert reports; (2) depositions of Defendants and non-parties taken during discovery; (3) sworn testimony obtained during the investigation from Defendants' executives and physicians as well as from fact witnesses; (4) documentary exhibits; (5) pre-hearing briefs and proposed findings of fact and conclusions of law; and (6) oral argument.

The structure of this proceeding need not deviate from schedules adhered to in past PI proceedings in merger cases. In seven of the PI proceedings brought by the FTC (some joined by state attorneys general) in the past 10 years, the federal court scheduled a hearing within 12 weeks of the complaint, and the hearing lasted no more than three days.² For example, the federal courts in both *OSF* (hospital merger) and *Steris* set 3-day hearings where both sides put on four witnesses each. In *ProMedica* (hospital merger) and *Phoebe* (hospital merger) the federal courts set 2-day and 1-day hearings, respectively, with no live witnesses. Defendants' proposed four-day hearing would increase the likelihood that non-parties might need to testify three times (at deposition, at the PI proceeding, and at the administrative proceeding), thereby increasing their expense and burden. Plaintiffs intend to present testimony from a limited number of fact and expert witnesses and a 2-day hearing would minimize the burden on non-parties. Defendants' proposed four-day hearing would increase the likelihood that non-parties might need to testify three times (deposition, PI proceeding, and administrative proceeding), thereby increasing their expense and burden.

A three-month window between the June 22, 2017, filing of the complaint and the start of a short PI proceeding is consistent with recent practice and provides ample time for the parties to complete discovery, which is already ongoing. The parties agreed that discovery would commence immediately following complaint, and Plaintiffs served discovery requests on Defendants the following week. Defendants received Plaintiffs' complete non-privileged investigatory files by June 27, but inexplicably did not issue any discovery until three weeks later on July 19. In fact, Plaintiffs and Defendants originally exchanged preliminary proposals in which Defendants proposed a PI hearing in mid-October (Plaintiffs proposed mid-September), and Plaintiffs' current proposal is an attempt to compromise. Further, given the narrow scope of the issues and relief requested, and Plaintiffs' willingness to accommodate additional limitations on discovery, discovery should be neither burdensome nor time-consuming.³

Given these considerations, Plaintiffs respectfully request a two-day evidentiary hearing starting on September 27, 2017.

2

Case	Hearing	Post-Complaint
<i>FTC v. Steris Corp.</i> , 15-cv-01080, ECF Nos. 19, 24 (N.D. Ohio 2015)	3 days	2.5 months
<i>FTC v. Ardagh Group, S.A.</i> , 13-cv-1021, ECF Nos. 3, 29 (D.D.C. 2013)	3 days	3 months
<i>FTC v. OSF Healthcare Sys.</i> , 11-cv-50344, ECF No. 1, 42 (N.D. Ill. 2011)	3 days	2.5 months
<i>FTC v. Phoebe Putney Health Sys., Inc.</i> , 11-cv-00058, ECF Nos. 2, 81 (M.D. Ga. 2011)	1 day	2 months
<i>FTC v. ProMedica Health Sys., Inc.</i> , 11-cv-00047, ECF Nos. 1, 101-02 (N.D. Ohio 2011)	2 days	1 month
<i>FTC v. Lab. Corp. of Am.</i> , 10-cv-01873, ECF Nos. 3, 140 (C.D. Cal. 2010)	1 day	2 months
<i>FTC v. Whole Foods Mkt., Inc.</i> , 07-cv-01021, ECF No. 3, Minute Entry July 31, 2007, Minute Entry Aug. 1, 2007 (D.D.C. 2007)	2 days	2 months

Several recent PI proceedings with slightly longer hearings (8-9 days) involved more contested and broad-reaching markets necessitating a larger number of witnesses. *FTC v. Staples, Inc.*, 15-cv-2115 (D.D.C. 2016); *FTC v. Sysco Corp.*, 15-cv-00256 (D.D.C. 2015).

³ Plaintiffs are amenable to placing limitations on witness lists and potentially limiting the use of declarations in connection with the PI Motion in the interest of narrowing the scope of discovery for both sides.

Respectfully submitted,

/s/ Kevin K. Hahn
Thomas J. Dillickrath
Parrell D. Grossman

Counsel for Plaintiffs

PLAINTIFFS' [PROPOSED] CASE MANAGEMENT SCHEDULE*Federal Trade Commission and State of North Dakota v. Sanford Health, et al.*, 17-cv-00133-ARS (D.N.D.)

Event	[Proposed] Deadline
Simultaneous Exchange of Preliminary Fact Witness Lists	August 3
Close of Fact Discovery	August 30
Simultaneous Exchange of Initial Expert Report(s)	September 1
Plaintiffs' Memorandum of Law in Support of Motion for Preliminary Injunction	September 5
Simultaneous Exchange of Rebuttal Expert Report(s)	September 11
Simultaneous Exchange of Final Witness Lists	September 11
Defendants' Opposition to Plaintiffs' Motion for Preliminary Injunction	September 15
Close of Expert Discovery	September 19
Simultaneous Exchange of Exhibit Lists	September 20
Plaintiffs' Reply in Further Support of Plaintiffs' Preliminary Injunction Motion	September 22
Simultaneous Exchange of Objections to Exhibit Lists	September 25
Two-Day Evidentiary Hearing	September 27-28
Post-Hearing Proposed Findings of Fact and Conclusions of Law	October 6

EXHIBIT B



July 25, 2017

Filed Via ECF

The Honorable Alice R. Senechal
United States District Court (D.N.D.)
655 1st Avenue North, Suite 440
Fargo, ND 58102-4952

Re: *FTC et al. v. Sanford Health et al.*, Case No. 1:17-cv-00133-ARS (D.N.D.)

Dear Judge Senechal:

Attached please find Sanford's and MDC's proposed schedule for the preliminary injunction hearing and pre-hearing milestones in the above-referenced matter. Sanford and MDC respectfully request that the Court commence a **four-day evidentiary hearing on Monday October 30, 2017**. With respect to location, we have no objection to holding the hearing in Bismarck, but are amenable to whichever location the Court prefers.

As indicated in prior correspondence with Ms. Strankowski, the parties have been unable to reach agreement on a proposed schedule, notwithstanding multiple efforts to do so. Sanford and MDC respectfully submit that our proposal is reasonable and consistent with the procedural posture and complex economic and factual issues in this case.

First, although the FTC's rules provide for both a federal court preliminary injunction phase and an administrative trial on the merits, as a practical matter in most FTC merger cases the issues (including appeals) are resolved in federal court and the administrative trial never occurs. While that course of action is not mandated, deviations from it are the exception, not the rule. Given that dynamic, the import of the preliminary injunction proceeding is greater than it might be in cases in which a federal court trial on the merits might be combined with, or shortly follow, a preliminary injunction proceeding.

In addition, the nature of the FTC and North Dakota AG investigations of the proposed Sanford-MDC transaction necessarily creates a significant asymmetry in information. Throughout the investigation period—which ran from late 2016 through June 2017—discovery was a one-way street. The government sought and obtained documents, data and testimony not only from Sanford and MDC, but also from an array of third parties. Only after the complaint was filed did Sanford and MDC counsel first gain access to those discovery materials. And what we were afforded access to for the first time in late June was substantial.

For example, the FTC and North Dakota AG produced over 200,000 pages of documents, native files, transcripts, and investigative files, totaling more than 47 GB of data, and 22 declarations from third parties. Even with those productions, which require significant resources to process, review and analyze, the discovery record is incomplete. Among other things, we need sufficient



The Honorable Alice R. Senechal
United States District Court (D.N.D.)
July 25, 2017

time to test the numerous assertions and opinions contained in the declarations. That is why we already have served substantial document and deposition subpoenas on several third parties, and there are more to come.

Moreover, the nature of the allegations and defenses here, coupled with their legal, economic and econometric underpinnings, require that Sanford and MDC retain experts who can analyze these interdependent issues and forecast the competitive impact of the proposed transaction. That is a time-consuming process and one for which the government has had a substantial head start. Moreover, Sanford and MDC cannot adequately complete that process until we receive and analyze the additional third party discovery we seek.

Second, regardless of when the hearing is held, the FTC and North Dakota AG cannot be prejudiced. That is because an agreed-upon temporary restraining order was entered on June 22, 2017 [Dkt. No. 7]. That means Sanford and MDC cannot close their transaction during the pendency of the preliminary injunction phase or for five business days after this Court rules on the preliminary injunction motion.

Third, we expect the FTC will say that the schedule entered in the parallel FTC administrative proceeding—with a hearing commencing on November 28, 2017— somehow compels the Court's adoption of their proposal. It does not. FTC Chief Administrative Law Judge Chappell, during a July 14 status conference, emphasized three times that the parties could jointly or individually seek a stay of the hearing pending an appeal of the preliminary injunction order to the Eighth Circuit. If the preliminary injunction motion is granted we will appeal that decision and, based on its history in similar cases, we expect the FTC to appeal if the motion is denied. Under such circumstances, it is common for the FTC to delay the start of an administrative proceeding pending the Court of Appeals' decision.

Fourth, the duration of preliminary injunction hearings for the last five matters litigated by the FTC have ranged from three to eight days, with only one being less than four days.

In closing, we do not believe the FTC and North Dakota AG can meet their burden in this case, but Sanford and MDC need a reasonable amount of time to prepare and present their defense. The schedule we have proposed provides a fair and appropriate timetable to permit us to do so, and we respectfully request that the Court adopt our proposal.

Sincerely,

/s/ Robert M. Cooper

/s/ Gregory R. Merz.

Counsel to Sanford Health and Sanford Bismarck

Counsel to Mid-Dakota Clinic

cc: Counsel of Record for Federal Trade Commission and State of North Dakota

PROPOSED CASE MANAGEMENT SCHEDULE
KEY DATES PROPOSED BY SANFORD AND MID-DAKOTA CLINIC
FTC AND STATE OF ND v. SANFORD AND MDC
Case No. 1:17-cv-00133-ARS

Event	Sanford and Mid-Dakota Clinic Proposed Date(s)
Complaint Filed	Complete
Discovery Commences	Complete
Exchange of Initial Disclosures	Complete
Defendants' Response to Plaintiffs' Complaint	Complete
Exchange of Preliminary Fact Witness Lists	August 4, 2017
Close of Fact Discovery	September 15, 2017
Simultaneous exchange of initial expert report(s)	September 25, 2017
Plaintiffs' Memorandum of Law in Support of Preliminary Injunction Motion	October 2, 2017
Simultaneous exchange of rebuttal expert report(s)	October 9, 2017
Exchange of Final Witness Lists	October 16, 2017
Defendants' Opposition to Plaintiffs' Motion for Preliminary Injunction	October 16, 2017
Exchange of Deposition Designations	October 18, 2017
Close of Expert Discovery	October 20, 2017
Plaintiffs' Reply to Defendants' Opposition to Preliminary Injunction Motion	October 23, 2017
Exchange of Deposition Counter-Designations	October 23, 2017
Exchange of Exhibit Lists	October 23, 2017
Four-day Evidentiary Hearing	October 30-November 2, 2017

EXHIBIT C

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
WESTERN DIVISION**

FEDERAL TRADE COMMISSION

and

STATE OF NORTH DAKOTA,

Plaintiffs,

v.

No. 1:17-cv-00133-ARS

SANFORD HEALTH,

SANFORD BISMARCK,

and

MID DAKOTA CLINIC, P.C.,

Defendants.

JOINT MOTION FOR CASE MANAGEMENT AND SCHEDULING ORDER

Plaintiffs Federal Trade Commission (“FTC”) and the State of North Dakota (collectively, “Plaintiffs”) and Defendants Sanford Health, Sanford Bismarck, and Mid Dakota Clinic, P.C. (collectively, “Defendants”) jointly move the Court to enter a case management and scheduling order (“Scheduling Order”) governing discovery and other matters relevant to this litigation. In accordance with Local Civil Rule 37.1, counsel for all parties met-and-conferred and agreed on the language of a proposed Scheduling Order.

The text of the proposed Scheduling Order is below.

* * * * *

- A. **TEMPORARY RESTRAINING ORDER.** The Court adopted the Stipulation for Temporary Restraining Order on June 22, 2017 (ECF No. 7). Under the terms of that Temporary Restraining Order, the Defendants cannot consummate their transaction, or otherwise effect a combination of Sanford and Mid Dakota Clinic, until after 11:59 pm Eastern time on the fifth business day after the Court rules on Plaintiffs' motion for preliminary injunction.
- B. **ANSWER.** Defendants answered Plaintiffs' Complaint on July 5, 2017.
- C. **DISCOVERY.**
1. **Initial Disclosures.** Each side completed initial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1) by June 29, 2017. If one side needs to supplement or correct their Rule 26(a)(1) disclosures during the pendency of this action, they will do so pursuant to Federal Rule of Civil Procedure 26(e).
 2. **Fact Discovery.** Fact discovery commenced on June 22, 2017. Fact discovery shall conclude by September 15, 2017. All discovery requests must be served to leave sufficient time to respond before the close of discovery.
 3. **Pre-Trial Discovery Conference.** This Scheduling Order relieves all parties of their duty under Federal Rule of Civil Procedure 26(f) to confer about scheduling and a discovery plan.
 4. **Requests for Production.**
 - a) There shall be no limit on the number of requests for production the parties may serve. The parties shall serve any objections to document requests within ten (10) calendar days after the date of service of the document request(s) to which objections are asserted. Within three (3) business days of service of any such objections, the parties shall meet and confer in a good faith effort to

resolve the objections. For requests for production served after entry of the Scheduling Order, the parties shall comply with requests for production of documents in their possession no later than twenty-one (21) calendar days after the date of service. The timing of objections and responses to requests for production served before entry of the Scheduling Order are subject to the Federal Rules of Civil Procedure.

- b) In response to any document request(s), parties need not produce to the other side in discovery in this case any documents previously produced by Defendants to Plaintiff FTC in the course of the FTC's investigation of the proposed transaction between Defendants, FTC File No. 171-0019, or any documents previously produced by Defendants to Plaintiff State of North Dakota in the course of the State of North Dakota's investigation of the proposed transaction.
5. Requests for Admission. Each side shall serve no more than fifteen (15) requests for admission per side. Requests for admission relating solely to the authenticity of a document or the admissibility of documents, data, or other evidence shall not count against this limit. Each side shall serve objections and responses to requests for admission no later than ten (10) calendar days after the date of service.
6. Interrogatories. Each side shall serve no more than twenty (25) interrogatories per side, including all discrete subparts. For purposes of this provision, an interrogatory requesting a refresh or update of a specification in the discovery requests issued to a Defendant in the FTC's investigation of the proposed acquisition (FTC File No. 171-0019) or the State of North Dakota's investigation of the proposed acquisition will count as a single interrogatory request in this proceeding, even if the specification

contains subparts. For interrogatories served after entry of the Scheduling Order that are not contention interrogatories, the parties shall serve objections and responses to interrogatories no later than ten (10) calendar days after the date of service. The timing of objections and responses to non-contention interrogatories served before entry of the Scheduling Order are subject to the Federal Rules of Civil Procedure. For any interrogatories that are contention interrogatories, the parties shall serve objections and responses no later than September 26, 2017. No party shall seek through a deposition of a party attorney information that it could otherwise obtain through a contention interrogatory.

7. Deadline to Issue Written Discovery to Parties. The parties shall serve all document requests, interrogatories, and requests for admission to parties by August 25, 2017, except that requests for admission related to the authenticity of a document or the admissibility of documents, data, or other evidence may be served no later than October 3, 2017.
8. Non-party Discovery. No party issuing a non-party subpoena for the production of documents or electronically stored information shall request a return date sooner than ten (10) calendar days after service. Notice and a copy of the subpoena must be served on each party as provided in the Federal Rules of Civil Procedure to permit objections. Each side shall produce all materials received pursuant to a non-party subpoena to the other side within two (2) business days of receiving those materials. Each side shall also produce any declarations or affidavits obtained, whether pursuant to a subpoena or not, within one (1) business day of receiving those materials. Production shall occur in the format the materials were received. No party or non-

party fact witness declaration or affidavit may be submitted as evidence in this proceeding if it is executed or served after August 31, 2017.

9. Expert Reports. The parties shall simultaneously serve their initial expert reports by 6:00 pm Eastern on September 25, 2017 or such other time as the parties may agree. The parties shall simultaneously serve their expert rebuttal reports, if any, by 6:00 pm Eastern on October 9, 2017 or such other time as the parties may agree. Testimony by expert witnesses related to opinions or analyses contained in their reports, or to opinions and analyses contained in opposing expert witnesses' rebuttal reports, shall not be subject to objection as to the scope of the expert witnesses' testimony. However, to the extent an expert witness raises a new opinion or analysis in a rebuttal report not directly addressing a point raised in the opposing party's opening expert report or in hearing testimony that could have been raised in a rebuttal report, such an opinion or analysis may be the proper subject of an objection. If an expert witness's rebuttal report goes beyond the scope of directly addressing points in the opposing party's opening expert report, the opposing party's expert witness may go beyond the scope of the opening and rebuttal reports in his or her testimony to address those beyond-the-scope points made in the opposing party's rebuttal report.

10. Expert Materials Subject to Discovery. Expert disclosures and reports shall comply with the requirements of Federal Rule of Civil Procedure 26(a)(2), except as modified herein:

a) At the time of service of an expert report, each side shall provide opposing counsel:

- i. Transcripts of testimony from all prior cases in which the expert has testified or been deposed within the preceding four years, provided

- the transcripts are in the possession, custody, or control of the producing party or the expert, except that transcript sections that are under seal in a separate proceeding need not be produced;
- ii. A list of all commercially available computer programs used by the expert in the preparation of the reports;
 - iii. A copy of all data sets used by the expert, in native file format and processed data file format;
 - iv. All customized computer programs used by the expert in preparation of the report or necessary to replicate the findings on which the expert report is based;
 - v. All documents and other written materials relied upon by the expert in formulating an opinion in this case, subject to the provisions of 10(b), except that documents and materials already produced in the case need only be listed by Bates number; and
 - vi. For any calculations appearing in the report, all data and programs underlying the calculation, including all programs and codes necessary to recreate the calculation from the initial (“raw”) data files.
- b) Neither side must preserve or disclose, including in expert deposition testimony, the following documents or materials:
- i. Any form of communication or work product shared between any of the parties’ counsel and their expert(s) retained specifically for purposes of this litigation, or between any of the experts themselves;

- ii. Any form of communication or work product shared between an expert(s) and persons assisting the expert(s);
- iii. Experts' notes, unless they constitute the only record of a fact or assumption relied upon by the expert in formulating an opinion contained in an expert report;
- iv. Materials considered but not relied upon by the expert in forming an opinion contained in an expert report;
- v. Drafts of expert reports, analyses, or other work product; or
- vi. Data formulations, data runs, data analyses, or any database-related operations not relied upon by the expert in the opinions contained in his or her final report, except as set forth in 10(a).

11. Exchange of Lists of Fact Witnesses to Appear at Evidentiary Hearing.

- a) *Preliminary Fact Witness Lists:* The parties shall simultaneously exchange preliminary fact witness lists by 6:00 pm Eastern time on August 3, 2017. Each side shall jointly submit one list. Preliminary fact witness lists shall summarize the general topics of each witness's anticipated testimony and shall include the name of the employer of each witness. No more than ten (10) individuals may appear on either side's preliminary fact witness list. Only a witness who appears on either side's preliminary fact witness list may be included on either side's final fact witness list, unless good cause is shown and the opposing side has been provided a reasonable opportunity to take the witness's deposition. The preliminary fact witness list may be amended for good cause shown, subject to the maximum of ten (10) potential witnesses described above.

- b) *Final Fact Witness Lists*: The parties shall simultaneously exchange final fact witness lists by 6 p.m. Eastern time on October 16, 2017, or such other time as the parties may agree. Each side shall jointly submit one list. Final fact witness lists shall summarize the general topics of each witness's anticipated testimony. The final fact witness list shall identify all witnesses the producing side expects it may present live at the evidentiary hearing, other than solely for impeachment. No more than seven (7) individuals may appear on either side's final fact witness list. Final fact witness lists may be amended after October 16, 2017, only by agreement of the parties or with leave of the Court for good cause shown.

12. Depositions.

- a) Number of Depositions. There shall be a limit of 10 depositions that each side can take, including depositions noticed to third parties. A deposition shall be counted only against the party first noticing the deposition. To the extent any witnesses are added to the preliminary fact witness list described in paragraph 11(a) and replace an existing witness who has already been deposed, that replacement witness may be deposed without counting against the ten (10) deposition limit. If any party puts forth a declaration, affidavit, or letter of support subsequent to August 3, 2017, that declarant may be deposed without counting against the ten (10) deposition limit set forth in this paragraph. The parties also agree that any deposition notice withdrawn less than 48 hours prior to the agreed-upon date for that deposition *will* count against the ten (10) deposition limit,

absent consent of the parties or good cause shown, and that no deposition notices shall issue after September 1, 2017.

- b) Scheduling. The parties shall consult with each other prior to confirming any deposition to coordinate the time and place of the deposition. The parties shall use reasonable efforts to reduce the burden on witnesses noticed for depositions and to accommodate the witness's schedule.
- c) Time. All depositions, including depositions of fact and expert witnesses, shall last no more than seven (7) hours as indicated by the actual testimony time kept by the court reporter or videographer. Fact and expert witnesses will only be deposed once absent either an agreement of the parties or with leave of the Court for good cause shown.
- d) Allocation of time. Deposition time shall be allocated in accordance with the Federal Rules of Civil Procedure or as follows in this Paragraph, unless otherwise agreed to by the parties or with leave of the Court for good cause shown. Any unused time allocated to one side shall not transfer to the other side. The parties need not separately notice the deposition of a non-party who has been noticed for deposition by the opposing side.
 - i. Non-party fact witnesses.
 - 1. Non-party declarants, affiants, or signers of letters of support for both sides. If an individual signed a declaration, affidavit, or a letter of support regarding the proposed transaction for both sides, the maximum time for that individual's deposition shall be allocated evenly between the sides.

2. Non-party Rule 30(b)(6) witnesses. Non-party fact witnesses who are noticed in their individual capacity and also serve as a non-party's Rule 30(b)(6) corporate representative shall sit for a deposition only once and shall be subject to the same time allocations as memorialized in Paragraph 12.d of this agreement.
 3. Non-party witnesses retained by Defendant(s). For non-party witnesses retained by Defendant(s) in connection with the proposed transaction, including, but not limited to, Deloitte LLP, Plaintiffs will have the opportunity to use the full seven hours for the deposition.
 4. All other non-party fact witnesses. For all other non-party fact witnesses, the maximum time for that individual's deposition shall be allocated evenly between the sides.
- e) Notice. Neither side may serve an initial deposition notice with fewer than seven (7) business days' notice, and any cross-deposition notice may not be served with fewer than three (3) business days' notice. Each side shall consult with the other side prior to confirming any deposition to coordinate the time and place of the deposition. For any subpoena served after the entry of this order, if one side serves a non-party subpoena for the production of documents or electronically stored information and a subpoena commanding attendance at a deposition, the deposition date must be at least seven (7) business days after the original return date for the document subpoena. In the event a sworn declaration or affidavit is

served less than three (3) business days in advance of the deposition of the declarant or affiant, the parties will work in good faith to reschedule the deposition.

- f) Deposition Designations. The parties need not designate portions of investigational hearings or depositions taken in the litigation. Full transcripts of investigational hearings or depositions taken in the litigation shall be admitted, except that to the extent a party cites investigational hearing or deposition testimony in support of a proposed finding of fact, the Court will assess any objections made on the record at the investigational hearing or deposition in determining whether to accept that proposed finding of fact.

13. Expert Deposition Scheduling. Depositions of each side's experts may be conducted only after the disclosure of rebuttal expert reports. Expert depositions must be completed by October 20, 2017.
14. Discovery Uses. All discovery taken in the above-captioned litigation may be used in connection with the Part 3 administrative proceeding (FTC Docket No. 9376). Only discovery obtained by a party in the Part 3 administrative proceeding (FTC Docket No. 9376) at least five (5) weeks prior to the evidentiary hearing in this proceeding may be used as part of this litigation. Paragraph 14 shall not be construed to prevent either side from challenging the admissibility of evidence in either proceeding.
15. Exhibit Lists. The parties shall exchange final exhibit lists by October 18, 2017. Each side shall jointly submit one list. Objections shall be exchanged by October 23, 2017.

D. MOTIONS AND BRIEFING SCHEDULE

16. Plaintiffs will file their memorandum in support of their anticipated motion for a preliminary injunction by October 2, 2017. This brief is not to exceed 40 pages.
17. Defendants will file their opposition to the Plaintiffs' motion for a preliminary injunction by October 16, 2017. This brief is not to exceed 50 pages.
18. Plaintiffs will file their reply memorandum in further support of their motion for a preliminary injunction by October 23, 2017. This brief is not to exceed 25 pages.
19. The parties' proposed findings of fact and conclusions of law shall be filed by November 10, 2017. Each side's proposed findings of fact and conclusions of law shall not exceed 100 pages.

E. PRELIMINARY INJUNCTION EVIDENTIARY HEARING

20. The Court has scheduled an evidentiary hearing lasting up to four (4) days on Plaintiffs' anticipated motion for a preliminary injunction to begin on October 31, 2017. Plaintiffs and Defendants shall split the time available at the evidentiary hearing evenly, with direct examination and cross-examination of witnesses, as well as opening or closing statements, counting against the party conducting the examination or presenting such statements. Should the Court augment the time available for this proceeding, any additional time shall be divided equally between Plaintiffs and Defendants. Plaintiffs may reserve a portion of their time for rebuttal.

F. OTHER MATTERS

21. Service. Service of any documents not filed via ECF, including pleadings, discovery requests, Rule 45 subpoenas for testimony or documents, expert disclosure, and delivery of all correspondence, whether under seal or otherwise, shall be by electronic mail to the following individuals designated by each party:

For Plaintiffs:

Thomas J. Dillickrath: tdillickrath@ftc.gov

Kevin Hahm: khahm@ftc.gov

Christopher Caputo: ccaputo@ftc.gov

Parrell D. Grossman: pgrossman@nd.gov

For Defendants:

Robert M. Cooper: rcooper@bsflp.com

Hershel A. Wancjer: hwancjer@bsflp.com

James Kraehenbuehl: jkraehenbuehl@bsflp.com

Gregory Merz: gregory.merz@gpmlaw.com,

Loren L. Hansen: loren.hansen@gpmlaw.com

In the event the volume of served materials is too large for email and requires electronic data transfer by file transfer protocol or a similar technology, or overnight delivery if agreed by the parties, the serving party will telephone or email the other side's principal designees when the materials are sent to provide notice that the materials are being served. For purposes of calculating discovery response times under the Federal Rules of Civil Procedure, electronic delivery shall be treated the same as hand delivery.

22. Nationwide Service of Process. Good cause having been shown in view of the geographic dispersion of potential witnesses in this action, the parties will be allowed nationwide service of process of discovery and trial subpoenas pursuant to Federal Rule of Civil Procedure 45 and 15 U.S.C. § 23, to issue from this Court. The availability of nationwide service of process, however, does not make a witness who is otherwise "unavailable" for purposes of Federal Rule of Civil Procedure 32 and

Federal Rule of Evidence 804 available under those rules regarding the use at trial of a deposition taken in this action.

23. Non-party Confidential Information. The Order Granting Motion for Protective Order Governing Confidential Materials (ECF No. 9) (“Protective Order”) shall govern discovery and production of Confidential Information. Any party serving discovery requests, notices, or subpoenas to a non-party shall provide the non-party with a copy of the Protective Order.
24. Privilege and Privilege Logs. Nothing in this Scheduling Order requires the production of any party’s attorney work-product, confidential attorney-client communications, or materials subject to the deliberative-process privilege or any other privilege. The parties agree that the following privileged or otherwise protected communications may be excluded from disclosure and privilege logs:
- (a) documents or communications sent solely between outside counsel for Defendants (or persons employed by or acting on behalf of such counsel) or sent solely between counsel for Plaintiffs (or persons employed by or acting on behalf of such counsel);
 - (b) documents or communications sent solely between Defendants’ outside counsel (or persons employed by or acting on behalf of such counsel) and Defendants’ internal counsel;
 - (c) documents or communications sent solely between Defendants’ outside counsel (or persons employed by or acting on behalf of such counsel) and Defendants’ employees or agents;
 - (d) documents or communications shared between outside counsel for Defendants (or persons employed or acting on behalf of such counsel) or

by counsel for the Federal Trade Commission or Plaintiff State of North Dakota (or persons employed by the Federal Trade Commission or Plaintiff State of North Dakota), and a testifying or consulting expert retained in anticipation of this litigation;

- (e) documents that were authored by Defendants' outside counsel or persons employed by the Federal Trade Commission or Plaintiff State of North Dakota, and not directly or indirectly furnished to any non-party, such as notes and memoranda; and
- (f) all privileged or work-product documents created on or after June 22, 2017.

25. Inadvertent Production of Privileged Material. In accordance with Federal Rule of Civil Procedure 16(b)(3)(B)(iv) and Federal Rule of Evidence 502(d), inadvertent production of documents or communications containing privileged information or attorney work product shall not be a basis for loss of privilege or work product of the inadvertently produced material, provided that the producing party notifies the receiving party within three (3) business days of learning of the inadvertent production. When a party determines that it has inadvertently produced such material, it will notify other parties, who will promptly return, sequester, or delete the protected material from their document management systems. Within two (2) business days of identifying inadvertently produced information or documents(s), the party seeking clawback of such materials shall provide a revised privilege log for the identified information or documents. A party may move the Court for an order compelling production of the material, but such party may not assert as a ground for entering such an order the mere fact of inadvertent production. The party asserting

the privilege must file its opposition under seal and submit a copy of the material in question for *in camera* review.

26. Electronically Stored Information. The parties agree as follows regarding the preservation and production of electronically stored information (“ESI”)

- a) All parties have established litigation holds to preserve ESI that may be relevant to the expected claims and defenses in this case. In addition, the parties have taken steps to ensure that automatic deletion systems will not destroy any potentially relevant information.
- b) All parties agree that the use of Technology Assisted Review tools may assist in the efficient production of ESI. However, if a party desires to use such technologies, it shall meet and confer with the other side and negotiate in good faith on the reasonable use of such technology.
- c) All parties will request ESI in the form or forms that facilitate efficient review of ESI. In general, the parties will produce ESI according to the same ESI technical specifications used by Defendants in the FTC’s or State of North Dakota’s pre-complaint investigation.

27. Evidentiary Presumptions.

- a) Documents produced by non-parties from the non-parties’ files shall be presumed authentic within the meaning of Federal Rule of Evidence 901. Any good-faith objection to a document’s admissibility must be provided with the exchange of other objections to trial exhibits. If a party serves a specific good-faith written objection to the document’s authenticity, the parties will promptly meet and confer to attempt to resolve any objection. The Court will

resolve any objections that are not resolved through this means or through the discovery process.

- b) All documents produced by a Defendant either in response to document requests in this litigation, or in the course of the FTC's investigation of the proposed transaction between Defendants, FTC File No. 171-0019, or in the course of Plaintiff State of North Dakota's investigation of the proposed transaction, are presumed to be authentic.
- c) Any party may challenge the authenticity or admissibility of a document for good cause shown, and if necessary may take discovery related solely to authenticity or admissibility of documents.

28. Video Deposition Designations. Each side may play the deposition video of no more than two (2) fact witnesses per side at the evidentiary hearing, unless the witness is unavailable to testify at the evidentiary hearing or for purposes of impeachment. If one side intends to show excerpts of a video deposition at the evidentiary hearing, then (a) the side intending to use the video shall designate the video deposition excerpts that the side intends to show at the evidentiary hearing at least ten (10) business days before the start of the evidentiary hearing; (b) the opposing side shall be permitted to counter-designate video excerpts of that witness five (5) business days after receiving notice of the other side's designation of video excerpts; and (c) at trial, all video designations and counter-designations will be played at one time and in sequential order.

29. Admissibility of Hearsay. In general, the parties will not object to the admission of evidence on hearsay grounds unless there is a specific indication that the evidence is unreliable or untrustworthy. However, each party reserves the right to argue that

particular exhibits or statements are too untrustworthy or too unreliable to have evidentiary value.

30. Modification of Scheduling Order. Any party may seek modification of this Scheduling Order for good cause, except that the parties may also modify discovery and expert disclosure deadlines by agreement.

[PROPOSED] SCHEDULE

Event	Deadline Date(s)
Discovery Commences	June 22, 2017
Service of Initial Disclosures	June 29, 2017
Defendants' Answer to Plaintiffs' Complaint	July 5, 2017
Exchange of Preliminary Fact Witness Lists	August 3, 2017
Deadline to Serve Written Discovery to Parties [(excluding Requests for Admission for Authentication/Admissibility)]	September 1, 2017
Close of Fact Discovery	September 15, 2017
Simultaneous exchange of initial expert report(s)	September 25, 2017
Plaintiffs' Memorandum of Law in Support of Preliminary Injunction Motion	October 2, 2017
Deadline to Serve Requests for Admission for Authentication/Admissibility	October 3, 2017
Status Conference	October 4, 2017
Simultaneous exchange of rebuttal expert report(s)	October 9, 2017
Defendants' Opposition to Plaintiffs' Motion for Preliminary Injunction	October 16, 2017
Exchange of Final Witness Lists	October 16, 2017
Exchange of Exhibit Lists	October 18, 2017

Event	Deadline Date(s)
Close of Expert Discovery	October 20, 2017
Objections to Exhibits	October 23, 2017
Plaintiffs' Reply to Defendants' Opposition to Preliminary Injunction Motion	October 23, 2017
Pre-Hearing Conference	
Evidentiary Hearing Begins	October 31, 2017
Proposed Findings of Fact and Conclusions of Law	November 10, 2017

Dated: August 18, 2017

Respectfully Submitted,

/s/ Thomas J. Dillickrath

Thomas J. Dillickrath
Kevin K. Hahm
Christopher Caputo
Jamie France
Melissa Hill
Rohan Pai
Federal Trade Commission
Bureau of Competition
Mergers IV Division
600 Pennsylvania Avenue, NW
Washington, DC 20580
Telephone: (202) 326-3680
Facsimile: (202) 326-2286
tdillickrath@ftc.gov
khahm@ftc.gov
ccaputo@ftc.gov
jfrance@ftc.gov
mchill@ftc.gov
rpai@ftc.gov

Attorneys for Plaintiff Federal Trade Commission

/s/ Parrell D. Grossman

Parrell D. Grossman, ND ID 04684
Elin S. Alm, ND ID 05924
State of North Dakota
Assistant Attorneys General
Consumer Protection & Antitrust Division
Office of Attorney General
Gateway Professional Center
1050 E. Interstate Ave., Ste. 200
Bismarck, ND 58503-5574
Telephone: (701) 328-5570
Facsimile: (701) 328-5568
pgrossman@nd.gov
ealm@nd.gov

Attorneys for Plaintiff the State of North Dakota

/s/ Ronald H. McLean

Ronald H. McLean
ND. Bar No. 03260
Serkland Law Firm-Fargo
10 Robert St.
P.O. Box 5017
Fargo, ND 58108
Telephone: (701) 232-8957
Facsimile: (701) 237-4049

Robert M. Cooper
Richard A. Feinstein
Samuel C. Kaplan
Nicholas A. Widnell
Hershel Wancjer
BOIES, SCHILLER FLEXNER LLP
1401 New York Ave, NW
Washington, D.C. 20005
Telephone: (202) 237-2727
Facsimile: (202) 237-6131
rcooper@bsflp.com
rfeinstein@bsflp.com
skaplan@bsflp.com
nwidnell@bsflp.com
hwancjer@bsflp.com

Attorneys for Defendants Sanford Health and Sanford Bismarck

/s/ Loren Hansen

Loren Hansen (ND Atty No. 08233)
Gregory Merz
GRAY PLANT MOOTY
500 IDS Center
80 South 8th Street
Minneapolis, Minnesota 55402
Telephone: (612) 632-3000
Facsimile: (612) 632-4444
loren.hansen@gpmlaw.com
gregory.merz@gpmlaw.com

Attorneys for Defendant Mid Dakota Clinic P.C.

EXHIBIT D

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA**

Federal Trade Commission and)
State of North Dakota,)
)
Plaintiffs,)
)
vs.)
)
Sanford Health, Sanford Bismarck,)
and Mid Dakota Clinic, P.C.,)
)
Defendants.)

Case No. 1:17-cv-133

ORDER

An August 1, 2017 order scheduled a four-day hearing on a motion for a preliminary injunction to begin October 31, 2017, stating that the hearing would be held in either Bismarck or Fargo, depending on courtroom availability. Via email correspondence on September 5, 2017, the parties were advised that the hearing would likely be held in Fargo.

The State of North Dakota, via email correspondence of September 14, 2017, and at an October 4, 2017 status conference, objected to conducting the hearing in Fargo, asserting this is a matter of great concern to the Bismarck/Mandan area and that it is in the public's interest to hold the hearing in Bismarck.

Via email correspondence of October 4, 2017, the court proposed a possible alternative schedule, with the hearing to be held in Bismarck beginning October 30, 2017. The court conducted a status conference with counsel on October 6, 2017, to discuss that possible alternative. Defendants objected to that alternative, asserting that they had made substantial arrangements based on the Fargo location, that the Fargo court facilities are better suited for accommodating the hearing, that the case had engendered limited newspaper coverage in Bismarck to date, that significant portions of

the hearing will need to be closed to the public regardless of location, that a key lawyer was not able to be in Bismarck on October 30th, and that another lawyer had personal commitments which would make the proposed alternative schedule difficult for him.

Having considered the parties' respective positions, the court finds that the public interest factor which the State asserts outweighs the other concerns. The hearing will be held in Courtroom 1, at the William L. Guy Courthouse, Bismarck, North Dakota, on October 30 and 31, 2017, and on November 2 and 3, 2017. That courtroom is well-equipped for electronic presentation of evidence and is large enough to accommodate the number of lawyers and party representatives expected. The clerk will make attorney/client consultation space available. The clerk will accommodate any requests for viewing the courtroom or testing its equipment prior to the hearing. Counsel should contact Kari Knudson, Chief Deputy Clerk, 701-530-2301, with any questions about court facilities.

A prehearing conference will be held on October 27, 2017, at 1:30 p.m., in Courtroom 2, Quentin N. Burdick Courthouse, Fargo, North Dakota. At their request, counsel may appear either via video from the Bismarck courthouse, or via phone.

IT IS SO ORDERED.

Dated this 6th day of October, 2017.

/s/ Alice R. Senechal
Alice R. Senechal
United States Magistrate Judge

CERTIFICATE OF SERVICE

I hereby certify that on October 12, 2017, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-113
Washington, DC 20580

The Honorable S. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-110
Washington, DC 20580

I also certify that I delivered via electronic mail a copy of the foregoing document to

Robert Cooper, Esq.
Richard A. Feinstein, Esq.
Boies Schiller Flexner LLP
1401 New York Avenue, NW
Washington, DC 20005
Telephone: (202) 237-2727
rcooper@bsfllp.com
rfeinstein@bsfllp.com

Counsel for Respondents Sanford Health and Sanford Bismarck

Gregory R. Merz, Esq.
Loren Hansen, Esq.
Gray Plant Mooty
500 IDS Center
80 South Eighth Street
Minneapolis, MN 55402
Telephone: (612) 632-3208
gregory.merz@gpmlaw.com
loren.hansen@gpmlaw.com

Counsel for Respondent Mid Dakota Clinic, P.C.

Dated: October 12, 2017

By: /s/ Emily Bowne
Emily Bowne, Attorney