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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION



In the Matter of

Sanford Health,
a corporation;

Sanford Bismarck,
a corporation;

and

Mid Dakota Clinic, P.C.,
a corporation.

Docket No. 9376

RESPONDENT MID DAKOTA CLINIC, P.C.'S
ANSWER TO COMPLAINT

Pursuant to 16 C.F.R. § 3.12, Respondent Mid Dakota Clinic, P.C. (“Mid Dakota” or “MDC”), by and through its undersigned counsel, answers the Complaint Counsel’s Complaint (the “Complaint”) in the above-captioned proceeding”).

The Complaint reflects a fundamental misunderstanding of the past, present and future delivery of, and payment for, health care in central and western North Dakota. It elevates theory over facts and conjures purported anticompetitive effects from the challenged transaction that cannot be reconciled with market realities in North Dakota. It ignores, among other things, the history of Sanford and Mid Dakota in expanding access to health care in North Dakota, the myriad benefits that this combination will deliver to the community, the bargaining leverage and business policies and practices of the dominant commercial payer, Blue Cross/Blue Shield, and the adverse effects on the local patient population if Mid Dakota is impeded from choosing the course that will best preserve its ability to deliver quality care.

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Unless specifically admitted, Mid Dakota denies each of the allegations of the Complaint Counsel's Complaint.

1. In response to the allegations contained in paragraph 1 of the Complaint, MDC admits the first sentence and states that the second sentence contains vague and ambiguous characterizations such as "by far the largest" to which no response is required. To the extent a response is required, MDC denies the second sentence.

2. In response to the allegations contained in paragraph 2 of the Complaint, MDC states that the allegations contain vague and ambiguous characterizations and legal conclusions, such as "substantially lessen" and "significant harm," to which no response is required. To the extent a response is required, MDC denies the allegations in paragraph 2.

3. In response to the allegations contained in paragraph 3 of the Complaint, MDC states that the allegations contain vague and ambiguous characterizations, such as "closest competitor", "major competitor" "significant competitor," and "directly respond to one another by," to which no response is required. MDC avers that Paragraph 3's selective quotation of unidentified written material or communications, offered without context, is misleading as framed. MDC and Sanford compete with a large number and variety of health care providers in North Dakota. To the extent a response is required, MDC denies the allegations in paragraph 3, except admits that MDC and Sanford have purchased new equipment, updated technology, expanded services, recruited high quality physicians, and provided patients with convenient and accessible health care services in North Dakota.

4. In response to the allegations contained in paragraph 4 of the Complaint, MDC states that the allegations contain vague and ambiguous characterizations and legal conclusions to which no response is required such as "will substantially lessen competition" and "relevant

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geographic market.” To the extent a response is required, MDC denies the allegations in paragraph 4.

5. In response to the allegations contained in paragraph 5 of the Complaint, MDC admits the first sentence of that paragraph. MDC states that the remaining allegations contain vague and ambiguous characterizations and legal conclusions, such as the terms “control,” and “significantly increases concentration,” “highly concentrated,” and “presumptively unlawful,” to which no response is required. To the extent a response is required, MDC denies the allegations in the second and third sentences of paragraph 5.

6. In response to the allegations contained in paragraph 6 of the Complaint, MDC states that allegations contain vague and ambiguous characterizations, such as the terms “compete for inclusion,” “very difficult,” and “competition between Sanford and MDC results in . . .” to which no response is required. To the extent a response is required, MDC denies the allegations in paragraph 6.

7. In response to the allegations contained in paragraph 7 of the Complaint, MDC states that the allegations contain vague and ambiguous characterizations, such as the terms “likely to increase,” “enhance,” “less favorable terms” and “diminished incentive,” to which no response is required. To the extent a response is required, MDC denies the allegations in paragraph 7.

8. In response to the allegations contained in paragraph 8 of the Complaint, MDC states that the allegations contain vague and ambiguous characterizations and legal conclusions, such as the terms “will not likely be timely,” “sufficient,” “offset,” “reposition,” “counteract,” and “constrain,” to which no response is required. To the extent a response is required, MDC denies the allegations in paragraph 8.

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9. In response to the allegations contained in paragraph 9 of the Complaint, MDC states that the allegations contain vague and ambiguous characterizations, such as the terms “speculative efficiency and quality-of-care claims,” “cognizable,” “far outweighed,” “potential harm,” and “would not justify,” to which no response is required. To the extent a response is required, MDC denies the allegations in paragraph 9, except to the extent that MDC admits that the Respondents have identified (and in certain circumstances quantified) an array of cost-saving efficiencies and quality-of-care improvements that will result from the Transaction.

10. In response to the allegations contained in paragraph 10 of the Complaint, MDC states that the allegation is a legal conclusion to which no response is required.

11. In response to the allegations contained in paragraph 11 of the Complaint, MDC states that the allegation is a legal conclusion to which no response is required.

12. In response to the allegations contained in paragraph 12 of the Complaint, MDC admits the first sentence and states that it lacks knowledge sufficient to form a belief as to the truth of the remaining allegations of paragraph 12.

13. In response to the allegations contained in paragraph 13 of the Complaint, MDC states that it lacks knowledge sufficient to form a belief as to the truth of the allegations in that paragraph.

14. In response to the allegations contained in paragraph 14 of the Complaint, MDC admits the first sentence, admits that the second sentence correctly states the number of MDC’s employed physicians, the number of physicians in specified specialties, and the number of APPs, without regard to locum physicians or independent contractor part-time physicians and APPs. MDC admits the remaining allegations in paragraph 14.

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15. In response to the allegations contained in paragraph 15 of the Complaint, MDC admits the first sentence of that paragraph and denies the second sentence.

16. In response to the allegations contained in paragraph 16 of the Complaint, MDC admits the allegations in paragraph 16.

17. In response to the allegations contained in paragraph 17 of the Complaint, MDC admits the first through fourth sentences. MDC denies the fifth sentence, except MDC admits that Respondents have entered into a Stock Purchase Agreement for the purchase of MDC stock and certain associated assets for the first figure specified in the fifth sentence and a Real Estate and Asset Purchase Agreement for the sale of the Mid Dakota Medical Building Partnership Assets for the amount specified in the fifth sentence. MDC admits the sixth sentence, except that MDC denies the words, “as well as the establishment of” which should be replaced with “coupled with” to make the assertion accurate. MDC admits the seventh sentence.

18. In response to the allegations contained in paragraph 18 of the Complaint, MDC states that the first sentence contains vague, speculative, and ambiguous characterizations and legal conclusions, such as the terms “threatens,” “substantial harm to competition,” “hypothetical monopolist,” and “small but significant and non-transitory increase in price,” to which no response is required. To the extent a response is required, MDC denies the allegations in paragraph 18.

19. In response to the allegations contained in paragraph 19 of the Complaint, MDC states that the first sentence contains legal conclusions and vague and ambiguous characterizations, such as the terms “threatens,” “substantial” and “competitive harm,” to which no response is required. To the extent a response is required, MDC denies the first sentence.

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The second sentence is a legal conclusion to which no response is required. To the extent a response is required, MDC denies the second sentence and admits the third sentence.

20. In response to the allegations contained in paragraph 20 of the Complaint, MDC states that the allegations in this paragraph are legal conclusions, and contain vague, speculative, and ambiguous characterizations, including “A payer would accept a SSNIP rather than market a network,” to which no response is required. To the extent a response is required, MDC denies the allegations in paragraph 20.

21. In response to the allegations contained in paragraph 21 of the Complaint, MDC states that the allegations are legal conclusions that contain vague, speculative, and ambiguous characterizations, such as “threatens,” “substantial competitive harm,” “generally,” and “A payer would accept a SSNIP rather than market a network,” to which no response is required. To the extent a response is required, MDC admits that pediatricians receive additional training to treat medical conditions affecting pediatric patients and denies the remaining allegations in paragraph 21.

22. In response to the allegations contained in paragraph 22 of the Complaint, MDC states that the paragraph contains legal conclusions and vague, speculative, and ambiguous characterizations, such as “threatens substantial competitive harm,” and “A payer would accept a SSNIP rather than market a network that omits OB/GYN services,” to which no response is required. To the extent a response is required, MDC denies the allegations in paragraph 22.

23. In response to the allegations contained in paragraph 23 of the Complaint, MDC states that the paragraph contains legal conclusions, and vague and ambiguous characterizations, such as the terms “threatens substantial competitive harm,” “typically,” “do not perform the same set of services,” and “A payer would accept a SSNIP rather than market a network that

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omits general surgery physician services,” to which no response is required. To the extent a response is required, MDC admits that general surgeons perform basic surgical procedures including abdominal surgeries, hernia repair surgeries, gallbladder surgeries, and appendectomies, and denies the remaining allegations in paragraph 23.

24. In response to the allegations contained in paragraph 24 of the Complaint, MDC states that the first sentence is a legal conclusion to which no response is required. To the extent a response is required, MDC denies the first sentence and admits the second sentence.

25. In response to the allegations contained in paragraph 25 of the Complaint, MDC states that the allegations in paragraph 25 are legal conclusions to which no response is required. To the extent a response is required, MDC denies the allegations in paragraph 25.

26. In response to the allegations contained in paragraph 26 of the Complaint, MDC states that the paragraph contains vague and ambiguous characterizations to which no response is required including “strongly prefer,” “very difficult,” and “controlled.” The third and fourth sentences also are legal conclusions to which no response is required. To the extent a response is required, MDC denies the allegations in paragraph 26.

27. In response to the allegations contained in paragraph 27 of the Complaint, MDC states that the first sentence is a vague legal conclusion to which no response is required. To the extent a response is required, MDC denies the first sentence, except that MDC admits that it competes with a large number and variety of health care providers in North Dakota. In response to the second sentence, MDC admits that a number of its patients reside in the Bismark/Mandan area. The third sentence contains vague characterizations to which no response is required. To the extent a response is required, MDC lacks knowledge sufficient to form a belief as to the truth of the third sentence. The fourth sentence is a vague and speculative characterization and legal

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conclusion to which no response is required. MDC avers that references to unidentified “evidence,” “confirm,” and “ordinary-course documents,” offered without context, are misleading as framed. To the extent a response is required, MDC denies the fourth sentence.

28. In response to the allegations contained in paragraph 28 of the Complaint, MDC admits the allegations.

29. In response to the allegations contained in paragraph 29 of the Complaint, MDC states that the allegations contained in paragraph 29 contain vague and ambiguous legal conclusions to which no response is required. To the extent a response is required, MDC denies the allegations in paragraph 29.

30. In response to the allegations contained in paragraph 30, MDC states that the allegations, including the accompanying table, contain legal conclusions and vague and ambiguous characterizations to which no response is required. To the extent a response is required, MDC denies the remaining allegations of the paragraph.

31. In response to the allegations contained in paragraph 31 of the Complaint, MDC states that the allegations contain vague and ambiguous characterizations to which no response is required, including “providers,” “occur in two distinct but related stages,” “compete for inclusion,” and “compete to attract patients.” To the extent a response is required, MDC lacks knowledge sufficient to form a belief as to the truth of the allegations in paragraph 31. MDC also states (with respect to paragraph 31 and, more generally, elsewhere in the complaint where payer-provider relationships are discussed) that any analysis of the impact of the Sanford-Mid Dakota Clinic transaction must account for policies and practices of, and the leverage exerted by, commercial payers in North Dakota and the actual dynamics of provider-commercial payer business relationships.

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32. In response to the allegations contained in paragraph 32 of the complaint, MDC states that the allegations contained in paragraph 32 of the complaint contain vague and ambiguous characterizations, such as “first stage of provider competition,” “providers compete to be included,” “central component,” and “based on,” to which no response is required. To the extent a response is required, MDC denies the allegations in paragraph 32. MDC also states (with respect to paragraph 32 and, more generally, elsewhere in the complaint where payer-provider relationships are discussed) that any analysis of the impact of the Sanford-Mid Dakota Clinic transaction must account for the policies and practices of, and the leverage exerted by commercial payers in North Dakota and the actual dynamics of provider-commercial payer business relationships.

33. In response to the allegations contained in paragraph 33 of the Complaint, MDC states that the allegations contain vague, speculative, and ambiguous characterizations, such as “a provider,” “preferential access,” “typically,” “all else being equal,” “dynamic,” and “attract more patients,” to which no response is required. To the extent a response is required, MDC denies the allegations in paragraph 33.

34. In response to the allegation contained in paragraph 34 of the Complaint, MDC states that the allegation contains vague and ambiguous characterizations, such as “the payers’ perspective,” “attractive,” and “typically,” to which no response is required. To the extent a response is required, MDC denies the allegations in paragraph 34.

35. In response to the allegations contained in paragraph 35 of the Complaint, MDC states that the allegations contain vague and ambiguous characterizations, such as “a provider,” “the provider,” “typically,” “Under a full risk-based payment model,” and “plays a key role,” to which no response is required. To the extent a response is required, MDC admits that bargaining

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leverage of payers plays a key role in negotiations between payers and providers and otherwise denies the remaining allegations of that paragraph.

36. In response to the allegations contained in paragraph 36 of the Complaint, MDC states that the allegations contain vague and ambiguous characterizations, such as “critical determinant,” “comparable,” “alternatives,” “leverage,” “more favorable,” “constrain,” and “constraints,” to which no response is required. To the extent a response is required, MDC denies the allegations in paragraph 36.

37. In response to the allegations contained in paragraph 37 of the Complaint, MDC states that the allegations contain vague and ambiguous characterizations, such as “between providers that are close substitutes,” “therefore tends to increase the merged entity’s bargaining leverage,” “more attractive,” “leads to higher reimbursement rates,” and “available alternative,” to which no response is required. To the extent a response is required, MDC denies the allegations in paragraph 37. MDC further avers that there is no legal or economic basis for the assertion that the preexisting leverage of a payer cannot eliminate a concern about the alleged bargaining leverage of the merged entity.

38. In response to the allegations contained in paragraph 38 of the Complaint, MDC states that the allegations contain vague and ambiguous characterizations, such as “a provider and a commercial payer,” “significantly impact,” and “may bear some portion of the cost,” to which no response is required. To the extent a response is required, MDC denies the allegations in paragraph 38.

39. In response to the allegations contained in paragraph 39 of the Complaint, MDC states that the allegations contain vague and ambiguous characterizations, such as “second stage of provider competition,” “providers compete to attract,” “non-price dimensions,” and “reduces

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the merged entity's incentive to compete," to which no response is required. To the extent a response is required, MDC denies the allegations in paragraph 39.

40. In response to the allegations contained in paragraph 40 of the Complaint, MDC states that the allegations contain vague, argumentative, and ambiguous characterizations, such as "closest competitor for each of the relevant services," "Sanford's ordinary course documents reflect," "close competition," "Sanford believes," "Sanford also considers," and "documents closely monitor," to which no response is required. MDC avers that the paragraph's selective quotation of unidentified written material or communications, offered without context, is misleading as framed. To the extent a response is required, MDC admits that it and Sanford both compete in the Bismarck Mandan area to provide what the Complaint has identified as relevant services and states that it lacks knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 40.

41. In response to the allegations contained in paragraph 41 of the Complaint, MDC states that the allegations contain vague and ambiguous characterizations, such as "MDC considers," "MDC expressed concern," "focused on Sanford as MDC's closest clinical competitor," to which no response is required. MDC avers that the paragraph's selective quotation of unidentified written material or communications, offered without context, is misleading as framed. To the extent a response is required, MDC denies the allegations in paragraph 41.

42. In response to the allegations contained in paragraph 42 of the Complaint, MDC states that the allegations contain vague and ambiguous characterizations, such as "track and respond to," "closest competitor to recruit," and "significant head-to-head competition," to which

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no response is required. To the extent a response is required, MDC denies the allegations in paragraph 42.

43. In response to the allegations contained in paragraph 43 of the Complaint, MDC states that the allegations contain vague, ambiguous and speculative characterizations, such as “close competitors,” “substitutes,” “next-best alternative,” “Diversion for adult PCP services” to which no response is required. To the extent a response is required, MDC lacks knowledge sufficient to form a belief as to the truth of the allegations in paragraph 43.

44. In response to the allegations contained in paragraph 44 of the Complaint, MDC states that the first two sentences contain vague and ambiguous characterizations to which no response is required, including “Offering provider coverage in the Bismarck-Mandan area is essential,” “key providers of the relevant services,” and “either one can support.” With respect to the third sentence, MDC admits that Sanford offers its employees a group health plan that excludes MDC physicians as in-network providers, and MDC offers its employees a group health plan that excludes Sanford physicians as in-network providers,” but denies that this provides an example of the prior allegations in paragraph 44 as the words “For example” are apparently meant to suggest. The fourth sentence is a vague and ambiguous characterization to which no response is required. To the extent a response is required, MDC denies the fourth sentence. The fifth and sixth sentences contain vague and ambiguous characterizations to which no response is required. To the extent a response is required, MDC denies the fifth and sixth sentence. The seventh and eighth sentences contain vague and ambiguous characterization to which no response is required, including “Commercial payers and employers do not view,” “Consistent with that view,” and “strongly prefer.” To the extent a response is required, MDC lacks knowledge sufficient to form a belief as to the truth of these sentences.

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45. In response to the allegations contained in paragraph 45 of the Complaint, MDC states that paragraph 45 contains vague, ambiguous and speculative characterizations, such as “interest,” “increase bargaining leverage in negotiations with commercial payers,” “enhance their ability to negotiate,” and “more favorable,” to which no response is required. To the extent a response is required, MDC denies the allegations in paragraph 45.

46. In response to the allegations contained in paragraph 46 of the Complaint, MDC states that the allegations contain vague and ambiguous characterizations, such as “commercial payers treat Sanford and MDC (as part of PrimeCare) as substitutes,” “virtually every,” “need to include,” to which no response is required. To the extent a response is required, MDC denies the allegations in paragraph 46.

47. In response to the allegations contained in paragraph 47 of the Complaint, MDC states that the allegations contain vague and ambiguous characterizations such as “Competition drives providers,” “compete with one another across various non-price dimensions,” “which has provided patients,” “to compete against one another,” and “improving patient access,” to which no response is required. To the extent a response is required, MDC denies the allegations in paragraph 47, except that MDC admits that Respondents have each substantially invested in acquiring new technology, expanding services and facilities, and improving patient access to health care in North Dakota.

48. In response to the allegations contained in paragraph 48 of the Complaint, MDC states that the words “to attract patients” are a vague and ambiguous characterization to which no response is required. To the extent a response is required, MDC admits that it has invested in new technology. In response to the second sentence, MDC admits that Sanford acquired 3-D mammography technology and states that it lacks knowledge sufficient to form a belief as to the

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truth of the remaining allegations in that sentence. The third sentence is a vague and ambiguous characterization to which no response is required. To the extent a response is required, MDC denies the third sentence. With respect to the fourth sentence, MDC admits that MDC acquired 3D mammography technology but states that the remainder of the sentence consists of vague and ambiguous characterizations to which no response is required. To the extent a response is required, MDC admits the remainder of the sentence. The allegations in the fifth through eighth sentences contain vague and ambiguous characterizations to which no response is required. To the extent a response is required, MDC states that it is without knowledge sufficient to form a belief as to the truth of the allegations contained in those sentences. MDC denies the allegations contained in the last sentence of paragraph 48.

49. In response to allegations contained in the first sentence of paragraph 49 of the Complaint, MDC states that the first sentence is a vague and ambiguous characterization to which no response is required. To the extent a response is required, MDC denies the sentence except that Sanford and MDC have “improved patient access and convenience options.” In response to the second sentence, MDC admits that Sanford and MDC “operate walk-in clinics.” The remainder of the sentence is a vague and ambiguous characterization to which no response is required. To the extent a response is required, MDC denies the remainder of the sentence. The third sentence is a vague and ambiguous characterization to which no response is required. To the extent a response is required, MDC denies the sentence. In response to the fourth sentence, MDC admits that Sanford and MDC “post wait times on their respective websites,” but states that the remainder of the sentence is a vague and ambiguous characterization to which no response is required. To the extent a response is required, MDC denies the remainder of the sentence. The fifth through eighth sentences contain vague and ambiguous characterizations to

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which no response is required. To the extent a response is required, MDC denies these sentences. The ninth sentence is a vague and ambiguous characterization to which no response is required as to the introductory phrase “To attract patients and gain a competitive edge over Sanford, MDC also offers services and amenities not available at Sanford.” To the extent a response is required, MDC denies the ninth sentence. MDC further avers that the paragraph’s selective quotation of unidentified written material or communications, offered without context, is misleading as framed.

50. In response to the allegations contained in paragraph 50 of the Complaint, MDC states that the allegations contain vague and ambiguous characterizations, such as “this direct competition in the quality of care and services,” “control,” “limited outside competition,” “dampen the merged firm’s incentive to compete,” “competition is,” and “not settle for mediocre when that would be easier,” and “you can get away with,” to which no response is required. To the extent a response is required, MDC admits that the paragraph selectively quotes from the transcript of one of the investigative hearings in this case, states that the selective quotation is provided without context necessary to make the quotation not misleading, and otherwise denies the allegations in paragraph 50.

51. In response to the allegations contained in paragraph 51 of the Complaint, MDC states that paragraph 51 contains vague, ambiguous and speculative characterizations, such as “unlikely to occur in a timely or sufficient manner,” “likely anticompetitive effects,” and “unlikely to offset fully.” To the extent a response is required, MDC denies the allegations in paragraph 51.

52. In response to the allegations contained in paragraph 52 of the Complaint, MDC states that the allegations contain vague, ambiguous and speculative characterizations and legal

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conclusions, such as “unlikely to expand sufficiently,” “makes it difficult,” “timely,” “it would be challenging,” “substantial,” “establish a presence,” and “anticompetitive effects of the Transaction” to which no response is required. To the extent a response is required, MDC denies the allegations in paragraph 52.

53. In response to the allegations contained in paragraph 53 of the Complaint, MDC states that the allegations contain vague, ambiguous and speculative characterizations, such as “significant,” “establishing,” “often have,” “challenging,” “substantial,” “likely would take,” and “meaningful,” to which no response is required. To the extent a response is required, MDC denies the allegations in paragraph 53.

54. In response to the allegations contained in paragraph 54 of the Complaint, MDC states that the allegations contain vague, ambiguous and speculative characterizations and legal conclusions, such as “offset the Transaction’s competitive harm,” “timely,” “sufficient,” “practical,” “would likely lower,” and “reasonable,” to which no response is required. To the extent a response is required, MDC denies the allegations in paragraph 54.

55. In response to the allegations contained in paragraph 55 of the Complaint, MDC states that the allegations contain vague, ambiguous and speculative characterizations, such as “timely,” “sufficient,” “offset any competitive harm,” “unlikely,” and “difficult,” to which no response is required. To the extent a response is required, MDC denies the allegations in paragraph 55.

56. In response to the allegations contained in paragraph 56 of the Complaint, MDC states that the allegations contain legal conclusions to which no response is required. To the extent a response is required, MDC denies the allegations in paragraph 56.

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57. In response to the allegations contained in the first sentence paragraph 57 of the Complaint, MDC admits that the Respondents have projected several categories of cost savings that will result from the Transaction, but denies the remaining allegations of that sentence. MDC further states that the second and third sentences contain vague and ambiguous characterizations, such as “many,” “suitable and interested alternative partner far less harmful to competition” to which no response is required. To the extent a response is required, MDC denies the second and third sentences. The allegation contained in the last sentence of paragraph 57 contains a vague legal conclusion to which no response is required. To the extent a response is required, MDC denies the fourth sentence.

58. In response to the allegations contained in paragraph 58 of the Complaint, MDC states that allegations contain vague and ambiguous characterizations, such as “other efficiency claims,” “speculative and unsubstantiated,” “could be accomplished absent the Transaction,” “high-quality,” and “these purported quality improvements,” to which no response is required. To the extent a response is required, MDC denies the allegations in paragraph 58, except that MDC admits that Sanford and MDC are high-quality providers of health care services and that it has identified (and in certain instances quantified) an array of quality improvements that will result from the transaction.

COUNT I

59. MDC incorporates its response to paragraphs 1 through 58 by reference as though fully set forth herein.

60. In response to the allegation contained in paragraph 60 of the Complaint, MDC states that the allegation contains legal conclusions to which no response is required. To the extent a response is required, MDC denies the allegations in paragraph 60.

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COUNT II

61. MDC incorporates its response to paragraphs 1 through 60 by reference as though fully set forth herein.

62. In response to the allegations contained in paragraph 62 of the Complaint, MDC states that the allegations contain legal conclusions to which no response is required. To the extent a response is required, MDC denies the allegations in paragraph 62.

DEFENSES

MDC hereby reserves the right to present additional defenses as this matter proceeds, particularly with respect to those defenses presently unknown to MDC. MDC hereby asserts the following defenses, without assuming any burden of proof on any issue or relieving the Complaint Counsel of its burden to establish each element of its alleged claims.

FIRST DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

The Complaint fails to comply with Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. § 45(b), because the issuance of the Administrative Complaint and the contemplated relief are not in the public interest.

THIRD DEFENSE

The proposed transaction is not an unfair method of competition in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

FOURTH DEFENSE

The proposed transaction will not substantially lessen competition in the relevant markets in violation of Section 7 of the Clayton Act as amended, 15 U.S.C. § 18.

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FIFTH DEFENSE

The merger between MDC and Sanford will result in substantial merger-specific efficiencies that far outweigh any alleged anticompetitive effects and, as a result of will benefit consumers.

SIXTH DEFENSE

The alleged market definitions fail as a matter of law.

SEVENTH DEFENSE

New entry and expansion by competitors can be timely, likely, and sufficient, such that it will ensure that there will be no harm to competition, or consumer welfare.

EIGHTH DEFENSE

The dominant commercial payer is a “powerful buyer” and has the ability to ensure that it is not compelled to accept reimbursement rates and policies that could be anticompetitive.

WHEREFORE, MDC prays for judgment as follows:

1. That Commission takes nothing by way of its Complaint;
2. That the Complaint, and each and every purported claim for relief therein, be dismissed with prejudice.
3. That MDC be awarded its costs of suit incurred herein, including attorneys’ fees and expenses; and
4. For such other and further relief as the Commission deems just and proper.

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Dated: July 5, 2017

**GRAY PLANT MOOTY
MOOTY & BENNETT, P.A.**

/s/ Gregory Merz _____

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CERTIFICATE OF SERVICE

I hereby certify that on July 5, 2017, I electronically filed the foregoing **RESPONDENT MID DAKOTA CLINIC, P.C.'S ANSWER TO COMPLAINT** using the Commission's electronic filing system, which will automatically send e-mail notification of such filing to all attorneys of record in this action.

/s/ Gregory Merz

GP:4833-4598-4075 v2

Notice of Electronic Service

I hereby certify that on July 06, 2017, I filed an electronic copy of the foregoing Respondent Mid Dakota Clinic P.C.'s Answer to Complaint, with:

D. Michael Chappell
Chief Administrative Law Judge
600 Pennsylvania Ave., NW
Suite 110
Washington, DC, 20580

Donald Clark
600 Pennsylvania Ave., NW
Suite 172
Washington, DC, 20580

I hereby certify that on July 06, 2017, I served via E-Service an electronic copy of the foregoing Respondent Mid Dakota Clinic P.C.'s Answer to Complaint, upon:

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