

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 Clinic (“MDC”) is impeded from choosing the course that will best preserve its ability to deliver quality care.

1. In response to the allegations contained in paragraph 1 of the Complaint, Sanford 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, Sanford denies the second sentence.

2. In response to the allegations contained in paragraph 2 of the Complaint, Sanford 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, Sanford denies the allegations in paragraph 2.

3. In response to the allegations contained in paragraph 3 of the Complaint, Sanford 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. Sanford avers that Paragraph 3’s selective quotation of unidentified written material or communications, offered without context, is misleading as framed. Sanford competes with a large number and variety of health care providers in North Dakota. To the extent a response is required, Sanford denies the allegations in paragraph 3, except admits that Sanford has purchased new equipment, updated technology, expanded services, recruited high quality physicians, and provided patients with convenient and accessible health care services in North Dakota.

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, Sanford denies the allegations in paragraph 8.

9. In response to the allegations contained in paragraph 9 of the Complaint, Sanford 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, Sanford denies the allegations in paragraph 9, except to the extent that Sanford admits that Sanford has identified (and in certain instances 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, Sanford 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, Sanford 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, Sanford admits the first sentence of paragraph 12. Sanford denies the second and third sentences. Sanford Bismarck is an affiliate but not a subsidiary of Sanford Health. Sanford admits the

18. In response to the allegations contained in paragraph 18 of the Complaint, Sanford 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, Sanford denies the allegations in paragraph 18 of the complaint.

19. In response to the allegations contained in paragraph 19 of the Complaint, Sanford states that the first sentence contains legal conclusions and vague and ambiguous characterizations, such as the terms “threatens,” “substantial,” and “competitive tort s4(n)-4((c)4(on)-10T

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, Sanford 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 rather than market a network that omits OB/GYN services,” to which no response is required. To the extent a response is required, Sanford denies the allegations in paragraph 22.

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

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

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

26. In response to the allegations contained in paragraph 26 of the Complaint, Sanford 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, Sanford denies the allegations in paragraph 26.

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

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

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

30. Sanford states that the allegations in the first four sentences of paragraph 30 are legal conclusions to which no response is required. Sanford further states that the remaining sentences of the paragraph and accompanying table contain legal conclusions and vague and ambiguous characterizations to which no response is required. To the extent a response is required, Sanford denies the remaining sentences of the paragraph.

31. In response to the allegations contained in paragraph 31 of the Complaint, Sanford states that the allegations contained in paragraph 31 of the complaint 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, Sanford lacks knowledge sufficient to form a belief as to the truth of the allegations in paragraph 31. Sanford 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 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.

32. In response to the allegations contained in paragraph 32 of the complaint, Sanford states that the allegations contained in paragraph 32 of the complaint

account for the policies and practices of, and 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, Sanford 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, Sanford denies the allegations in paragraph 33.

34. In response to the allegation contained in paragraph 34 of the Complaint, San

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every,” “need to include,” to which no response is required. To the extent a response is required, Sanford denies the allegations in paragraph 46.

47. In response to the allegations contained in paragraph 47 of the Complaint, Sanford 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, Sanford denies the allegations in paragraph 47, except that Sanford admits that Sanford has 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, Sanford 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, Sanford denies the sentence, except Sanford admits that it has invested in new technology. Sanford states that the second sentence contains vague and ambiguous characterizations, such as “state-of-the-art technology” and “superior to.” To the extent a response is required, Sanford admits that it acquired 3D mammography technology, and lacks knowledge sufficient to form a belief as to the truth of the remaining allegations in the sentence. The third sentence is a vague and ambiguous characterization to which no response is required. To the extent a response is required, Sanford denies the third sentence. With respect to the fourth sentence, Sanford 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, Sanford denies the remainder of the sentence. The allegations in the fifth

through ninth sentences contain vague and ambiguous characterizations to which no response is required. To the extent a response is required, Sanford denies the fifth through ninth sentences except Sanford admits that it invested in a tower-free hysteroscopy system to offer certain gynecological procedures in a clinical setting. Sanford further avers that the paragraph's selective quotation of unidentified written material or communications, offered without context, is misleading as framed.

49. In response to allegations contained in the first sentence of paragraph 49 of the Complaint, Sanford states that the first sentence is a vague and ambiguous characterization to which no response is required. To the extent a response is required, Sanford denies the sentence except that Sanford and MDC have "improved patient access and convenience options." In response to the second sentence, Sanford 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, Sanford 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, Sanford denies the sentence. In response to the fourth sentence, Sanford 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, Sanford denies the remainder of the sentence. The fifth through eighth sentences contain vague and ambiguous characterizations to which no response is required. To the extent a response is required, Sanford denies the 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, Sanford denies the ninth sentence. Sanford 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, Sanford 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 easie

the Transaction” to which no response is required. To the extent a response is required, Sanford denies the allegations in paragraph 52.

53. In response to the allegations contained in paragraph 53 of the Complaint, Sanford 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, Sanford denies the allegations in paragraph 53.

54. In response to the allegations contained in paragraph 54 of the Complaint, Sanford 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, Sanford denies the allegations in paragraph 54.

55. In response to the allegations contained in paragraph 55 of the Complaint, Sanford 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, Sanford denies the allegations in paragraph 55.

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

57. In response to the allegations contained in paragraph 57 of the Complaint, Sanford admits that Respondents have projected several categories of cost savings that will result from the Transaction—but denies the remaining allegations of the first sentence. Sanford further

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states that the second sentence contains vague and ambiguous characterizations, such as “many,” to which no response is required. To the extent a response is required, Sanford denies the second sentence. Sanford further states that the third sentence contains vague and ambiguous

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, will benefit consumers.

SIXTH DEFENSE

The alleged market definitions fail as a matter of law.

SEVENTH DEFENSE

CERTIFICATE OF SERVICE

I hereby certify that on July 5, 2017, I electronically filed the foregoing **RESPONDENT SANFORD HEALTH AND SANFORD BISMARCK'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/ Hershel A. Wancjer
Hershel A. Wancjer

Notice of Electronic Service

I hereby certify that on July 05, 2017, I filed an electronic copy of the foregoing Respondent Sanford Health and Sanford Bismarcks Answer , with:

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I hereby certify that on July 05, 2017, I served via E-Service an electronic copy of the foregoing Respondent Sanford Health and Sanford Bismarcks Answer , upon:

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