

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

**FEDERAL TRADE COMMISSION**

**and**

**STATE OF NORTH DAKOTA,**

**Plaintiffs,**

**v.**

**SANFORD HEALTH,**

**SANFORD BISMARCK,**

**and**

**MID-DAKOTA CLINIC, P.C.,**

**Defendants.**

**Case No. 1:17-cv-00133-DLH-CSM**

**DEFENDANTS SANFORD HEALTH AND SANFORD BISMARCK’S  
ANSWER TO COMPLAINT FOR TEMPORARY RESTRAINING ORDER AND  
PRELIMINARY INJUNCTION**

Defendants Sanford Health and Sanford Bismarck<sup>1</sup> (“Sanford”), by and through its undersigned counsel, answers the Complaint (“Complaint”) of Plaintiffs the Federal Trade Commission (“FTC” or “Commission”) and State of North Dakota (“Plaintiffs”). Unless specifically admitted, Sanford denies each of the allegations of Plaintiffs’ Complaint.

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<sup>1</sup> While the Complaint purports to be directed to Sanford Health as well as Sanford Bismarck, as explained in Paragraph 17 of this Answer, there is no relevant company with the name of Sanford Health. Sanford Bismarck is a subsidiary of Sanford, not Sanford Health.

This 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 flawed theory over facts and conjures purported anticompetitive effects from the challenged Sanford-Mid Dakota Clinic transaction (the “Transaction”) that cannot be reconciled with market realities in North Dakota. It ignores, *inter alia*, Sanford’s history 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 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.

4. In response to the allegations contained in paragraph 4 of the Complaint, Sanford 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 geographic market.” To the extent a response is required, Sanford denies the allegations in paragraph 4.

5. In response to the allegations contained in paragraph 5 of the Complaint, Sanford admits the first sentence of paragraph 5. Sanford states that the remaining allegations contain vague and ambiguous characterizations and legal conclusions, such as the terms “control,” “significantly increases concentration,” “highly concentrated,” and “presumptively unlawful,” to which no response is required. To the extent a response is required, Sanford 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, Sanford 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, Sanford denies the allegations in paragraph 6.

7. In response to the allegations contained in paragraph 7 of the Complaint, Sanford 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, Sanford denies the allegations in paragraph 7.

8. In response to the allegations contained in paragraph 8 of the Complaint, Sanford 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, 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 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 allegations are legal conclusions to which no response is required. To the extent a response is required, Sanford denies the allegations in paragraph 10.

11. In response to the allegations contained in paragraph 11 of the Complaint, Sanford states that the allegations are legal conclusions to which no response is required.

12. In response to the allegations contained in paragraph 12 of the Complaint, Sanford states that the allegations are legal conclusions to which no response is required.

13. In response to the allegations contained in paragraph 13 of the Complaint, Sanford states that the allegations are legal conclusions to which no response is required.

14. In response to the allegations contained in paragraph 14, Sanford states that the allegations are legal conclusions to which no response is required. To the extent a response is required, Sanford denies the allegations in paragraph 14.

15. In response to the allegations contained in paragraph 15 of the Complaint, Sanford states that the allegations are legal conclusions to which no response is required.

16. In response to the allegations contained in paragraph 16 of the Complaint, Sanford states that the allegations are legal conclusions to which no response is required.

17. In response to the allegations contained in paragraph 17 of the complaint, Sanford admits the first sentence of paragraph 17. Sanford denies the second and third sentences. Sanford Bismarck is an affiliate but not a subsidiary of Sanford Health. Sanford admits the fourth sentence of paragraph 17. Sanford denies the fifth and sixth sentences of paragraph 17. Sanford admits the seventh sentence. Sanford denies the eighth sentence.

18. In response to the allegations contained in paragraph 18 of the Complaint, Sanford denies the first sentence of paragraph 18, except that Sanford admits that Sanford Health Plan and its subsidiaries sell health insurance in four states, including North Dakota. Sanford admits the second sentence in paragraph 18.

19. In response to the allegations contained in paragraph 19 of the Complaint, Sanford admits the first sentence and 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. Sanford admits the remaining allegations in paragraph 19, except Sanford

lacks knowledge sufficient to form a belief as to the truth of the assertion that “MDC is the twelfth-largest private employer in Bismarck.”

20. In response to the allegations contained in paragraph 20 of the Complaint, Sanford admits the first sentence and denies the second sentence in paragraph 20.

21. In response to the allegations contained in paragraph 21 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 lacks knowledge sufficient to form a belief as to the truth of the first sentence. Sanford admits the second sentence in paragraph 21.

22. In response to the allegations contained in paragraph 22 of the Complaint, Sanford admits the first through fourth sentences. Sanford denies the fifth sentence, except Sanford admits that Defendants 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. Sanford admits the sixth sentence, except that Sanford denies the words “, as well as the establishment of” which should be replaced with “coupled with” to make the assertion accurate. Sanford admits the seventh sentence.

23. In response to the allegations contained in paragraph 23 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. The second and third sentences are characterizations as to how the administrative proceeding will proceed to which no response is required. The fourth sentence is a legal conclusion to which no response is required.

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

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

26. In response to the allegations contained in paragraph 26 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 26 of the complaint.

27. In response to the allegations contained in paragraph 27 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 harm,” to which no response is required. To the extent a response is required, Sanford denies the first sentence. The second sentence is a legal conclusion to which no response is required. To the extent a response is required, Sanford denies the second sentence. Sanford admits the third sentence.

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

29. In response to the allegations contained in paragraph 29 of the Complaint, Sanford 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, Sanford admits that pediatricians receive additional training to treat medical conditions affecting pediatric patients and denies the remaining allegations in paragraph 29.

30. In response to the allegations contained in paragraph 30 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 30.

31. In response to the allegations contained in paragraph 31 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 31.

32. In response to the allegations contained in paragraph 32 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.

33. In response to the allegations contained in paragraph 33 of the Complaint, Sanford states that the allegations in paragraph 33 are legal conclusions 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 allegations contained in paragraph 34 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 34.

35. In response to the allegations contained in paragraph 35 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.

36. In response to the allegations contained in paragraph 36 of the Complaint, Sanford admits the allegations.

37. In response to the allegations contained in paragraph 37 of the Complaint, Sanford states that the allegations contained in paragraph 37 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 37.

38. Sanford states that the allegations in the first four sentences of paragraph 38 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.

39. In response to the allegations contained in paragraph 39 of the Complaint, Sanford states that the allegations contained in paragraph 39 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 39. Sanford also states (with respect to paragraph 39 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.

40. In response to the allegations contained in paragraph 40 of the complaint, Sanford states that the allegations contained in paragraph 40 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, Sanford denies the allegations in paragraph 40. Sanford also states (with respect to paragraph 40 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 leverage exerted by, commercial payers in North Dakota and the actual dynamics of provider-commercial payer business relationships.

41. In response to the allegations contained in paragraph 41 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 41.

42. In response to the allegation contained in paragraph 42 of the Complaint, Sanford 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, Sanford denies the allegations in paragraph 42.

43. In response to the allegations contained in paragraph 43 of the Complaint, Sanford 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, Sanford denies the allegations in paragraph 43, except that Sanford admits that bargaining leverage of payers plays a key role in negotiations between payers and providers.

44. In response to the allegations contained in paragraph 44 of the Complaint, Sanford states that the allegations contain vague and ambiguous characterizations, such as “critical determinant,” “comparable,” “alternatives,” “leverage,” “more favorable,” “constrain” and “constraint,” to which no response is required. To the extent a response is required, Sanford denies the allegations in paragraph 44.

45. In response to the allegations contained in paragraph 45 of the Complaint, Sanford 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, Sanford denies the allegations in paragraph 45. Sanford 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.

46. In response to the allegations contained in paragraph 46 of the Complaint, Sanford 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, 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 “second stage of provider competition,” “providers compete to attract,” “non-price dimensions,” and “reduces the merged entity’s incentive to compete,” to which no response is required. To the extent a response is required, Sanford denies the allegations in paragraph 47.

48. In response to the allegations contained in paragraph 48 of the Complaint, Sanford 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. Sanford 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, Sanford denies the allegations in paragraph 48.

49. In response to the allegations contained in paragraph 49 of the Complaint, Sanford 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. Sanford 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, Sanford denies the allegations in paragraph 49.

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 “track and respond to,” “closest competitor to recruit,” and “significant head-to-head competition,” to which no response is required. To the extent a response is required, Sanford denies the allegations in paragraph 50.

51. In response to the allegations contained in paragraph 51 of the Complaint, Sanford 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, Sanford lacks knowledge sufficient to form a belief as to the truth of the allegations in paragraph 51.

52. In response to the allegations contained in paragraph 52 of the Complaint, Sanford 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.” To the extent a response is required, Sanford denies the second sentence. With respect to the third sentence, Sanford admits that it “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 52 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, Sanford 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, Sanford denies the fifth and sixth sentences. 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, Sanford lacks knowledge sufficient to form a belief as to the truth of these sentences.

53. In response to the allegations contained in paragraph 53 of the Complaint, Sanford states that paragraph 53 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, 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 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, 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 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 55, 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.

56. In response to the allegations contained in paragraph 56 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.

57. In response to allegations contained in the first sentence of paragraph 57 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.

58. In response to the allegations contained in paragraph 58 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 easier,” and “you can get away with,” to which no response is required. To the extent a response is required, Sanford denies the allegations in paragraph 58, except that Sanford lacks knowledge as to what the physician quoted in the paragraph “feel[s],” “want[s],” and “think[s]” as stated in the quoted language. Sanford further avers that the paragraph’s selective quotation of unidentified written material or communications, offered without context, is misleading as framed.

59. In response to the allegations contained in paragraph 59 of the Complaint, Sanford states that paragraph 59 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, Sanford denies the allegations in paragraph 59.

60. In response to the allegations contained in paragraph 60 of the Complaint, Sanford states that the allegations contain vague, ambiguous and speculative characterizations and legal 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, Sanford denies the allegations in paragraph 60.

61. In response to the allegations contained in paragraph 61 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 61.

62. In response to the allegations contained in paragraph 62 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 62.

63. In response to the allegations contained in paragraph 63 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 63.

64. In response to the allegations contained in paragraph 64 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 64.

65. In response to the allegations contained in paragraph 65 of the Complaint, Sanford admits that Defendants have projected several categories of cost savings that will result from the Transaction—but denies the remaining allegations of the first sentence. Sanford further 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 characterizations to which no response is required, such as “suitable and interested alternative partner far less harmful to competition.” To the extent a response is required, Sanford denies the third sentence. The allegation contained in the last sentence of paragraph 65 contains a vague legal conclusion to which no response is required. To the extent a response is required, Sanford denies the fourth sentence.

66. In response to the allegations contained in paragraph 66 of the Complaint, Sanford 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, Sanford denies the allegations in paragraph 66, except that Sanford 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.

67. In response to the allegations contained in paragraph 67 of the Complaint, Sanford states that the allegation contains legal conclusions to which no response is required. To the extent a response is required, Sanford denies the allegations in paragraph 67.

68. In response to the allegation contained in paragraph 68 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 68.

69. In response to the allegations contained in paragraph 69, 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 69.

70. In response to the allegations contained in paragraph 70 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 70.

71. In response to the allegations contained in paragraph 71 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 71 and further denies that Plaintiffs are entitled to any relief whatsoever.

### **DEFENSES**

Sanford hereby reserves the right to present additional defenses as this matter proceeds, particularly with respect to those defenses presently unknown to Sanford. Sanford hereby asserts the following defenses, without assuming any burden of proof on any issue or relieving the Plaintiffs of their 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 13(b) of the Federal Trade Commission Act, 15 U.S.C. § 53(b), because the issuance of the 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.

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, Sanford prays for judgment as follows:

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

Dated: July 5, 2017

Respectfully submitted,

/s/ Ronald H. McLean

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on July 5, 2017, I electronically filed the foregoing document on all parties via the Court's electronic filing system, which will automatically send e-mail notification of such filing to all attorneys of record in this action.

/s/ Ronald H. McLean  
Ronald H. McLean