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**UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT**

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FEDERAL TRADE COMMISSION; STATE OF NORTH DAKOTA,

*Plaintiffs-Appellees,*

v.

SANFORD HEALTH; SANFORD BISMARCK; MID-DAKOTA CLINIC, P.C.,

*Defendants-Appellants.*

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*Appeal from the United States District Court for the District of North Dakota  
Case No. 1:17-cv-00133-ARS, Hon. Alice R. Senechal*

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**APPELLANTS' STATEMENT OF ISSUES**

Pursuant to the Court's December 26, 2017 Order, Appellants submit the below statement of issues to be considered on appeal. Appellants reserve the right to modify this statement of issues, including by adding or removing issues, in their Opening Brief.

- Whether the District Court erred in defining an antitrust market by misapplying the hypothetical monopolist test.
- Whether the District Court erred by imposing the ultimate burden of persuasion on the Defendants.
- Whether the District Court applied the wrong legal standard in evaluating (a) the transaction's asserted anti-competitive effects, (b) entry of new

competitors and expansion of existing competition in the relevant service areas if the transaction is consummated, (c) pro-competitive efficiencies and synergies from the transaction, and/or (d) MDC's future ability to compete absent the transaction.

- Whether the District Court committed clear error in evaluating evidence related to the transaction's (a) asserted anti-competitive effects, (b) entry of new competitors and expansion of existing competition in the relevant service areas if the transaction is consummated, (c) pro-competitive efficiencies and synergies from the transaction, and/or (d) MDC's future ability to compete absent the transaction.

Respectfully submitted,

/s/ Greg R. Merz

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## CERTIFICATE OF SERVICE

I hereby certify, pursuant to Federal Rule of Appellate Procedure 25(c) and Circuit Rule 25A, that on January 9, 2018, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, which will send a notification to the attorneys of record in this matter.

January 9, 2018

Respectfully,

/s/ Robert M. Cooper  
Robert M. Cooper  
*Counsel for Appellants*