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

Federal Trade Commission and State of North Dakota,	)	
Plaintiffs,	)	
vs.	)	Case No. 1:17-cv-133
	)	**ORDER**
Sanford Health, Sanford Bismarck, and Mid Dakota Clinic, P.C.,	)	
Defendants.	)	

Alleging that a proposed transaction between two healthcare providers—Sanford Health/Sanford Bismarck and Mid Dakota Clinic, P.C.—would substantially lessen competition and cause significant harm to consumers, the Federal Trade Commission and the State of North Dakota brought this action to preliminarily enjoin consummation of the proposed transaction pending an FTC administrative hearing. The administrative hearing is currently scheduled to begin on January 17, 2018.[1]

The parties stipulated to entry of a temporary restraining order, under which the proposed transaction cannot be closed until five business days after the court rules on the plaintiffs' motion for a preliminary injunction. (See Doc. #7).

Pursuant to 28 U.S.C. § 636(c), all parties consented to jurisdiction of a magistrate judge. (Doc. #39). Beginning on October 30, 2017, the undersigned magistrate judge held a four-day evidentiary hearing on the motion for a preliminary

[1] At the time of the preliminary injunction hearing, the administrative hearing was scheduled to begin on November 28, 2017, within the five-month period provided by 16 C.F.R. § 3.11(b)(4). The administrative law judge has since granted an extension to January 17, 2018.

injunction. At that hearing, the court received over 1600 exhibits—all admitted pursuant to stipulation by all parties—and heard testimony from sixteen witnesses. Following conclusion of the hearing, the parties submitted proposed findings of fact and conclusions of law. The court's review of documents received into evidence has been limited to those portions of the documents addressed during hearing testimony or cited in the parties' proposed findings of facts and conclusions of law.

The plaintiffs contend the pending transaction would unlawfully lessen competition among four physician service lines—adult primary care physician services, pediatrician services, obstetrician/gynecologist physician services, and general surgeon services—in the Bismarck-Mandan, North Dakota, Metropolitan Statistical Area (Bismarck-Mandan area), which includes the counties of Burleigh, Morton, Oliver, and Sioux. The defendants argue that the plaintiffs' position does not adequately consider the impact of a powerful buyer—Blue Cross Blue Shield of North Dakota. The defendants assert that the presence of that powerful buyer would preclude any anticompetitive effects that might otherwise result from the proposed transaction and that the proposed transaction would benefit consumers in the Bismarck-Mandan area.

Having fully considered the hearing testimony, the exhibits as described above, and the briefs of the parties, the plaintiffs' motion for a preliminary injunction is **GRANTED**.

The court's findings of fact and conclusions of law are being filed contemporaneously with this order. Because some of the testimony concerned sensitive and confidential business information of the defendants and of third parties, portions of the hearing were not open to the public. For the same reason, certain of the exhibits have been sealed and are not available to the public, and the court's findings of fact and

conclusions of law are being filed under seal. A redacted document will be publically filed as soon as possible.

The parties are directed to confer and submit their proposed redactions to the findings of fact and conclusions of law to <ndd_J-Senechal@ndd.uscourts.gov>, no later than 12:00 p.m., Central Standard Time, on December 15, 2017. If the parties do not agree on redactions, the parties shall advise the court of their positions by the same date.

IT IS SO ORDERED.

Dated this 13th day of December, 2017.

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