

FEDERAL TRADE COMMISSION DECISIONS

FINDINGS, OPINIONS, AND ORDERS
JULY 1, 2019, TO DECEMBER 31, 2019

IN THE MATTER OF

**SANFORD HEALTH,
SANFORD BISMARCK,
AND
MID DAKOTA CLINIC, P.C.**

COMPLAINT AND FINAL ORDER IN REGARD TO ALLEGED VIOLATIONS OF SECTION 5 OF THE
FEDERAL TRADE COMMISSION ACT, AND SECTION 7 OF THE CLAYTON ACT

*Docket No. 9376; File No. 171 0019
Complaint, June 21, 2017 – Decision, July 8, 2019*

This case addresses the \$102.2 million acquisition by Sanford Health and Sanford Bismarck of certain assets of Mid Dakota Clinic, P.C. The complaint alleges that the transaction will violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act by substantially lessening competition in the markets for adult PCP services, OB/GYN services, pediatric services, general surgery physician services, and outpatient surgical services in the Bismarck-Mandan area of North Dakota. Complaint Counsel and Respondents Sanford Health, Sanford Bismarck and Mid Dakota Clinic, P.C. jointly moved to dismiss the complaint in the above-captioned because Respondents are abandoning their efforts to pursue a proposed merger.

Participants

For the *Commission*: Christopher Caputo, Stephanie Cummings, Jamie France, Melissa Hill, Laura Krachman, Rohan Pai, Neal Perlman, and Cathleen Williams.

For the *Respondents*: Robert Cooper, Richard Feinstein, Nicholas Widnell, and Herschel Wancjer, Boies, Schiller & Flexner LLP; Timothy Johnson, Gregory Merz, and Julia Reiland, Gray Plant Mooty.

COMPLAINT

REDACTED PUBLIC VERSION

Pursuant to the provisions of the Federal Trade Commission Act (“FTC Act”), and by the virtue of the authority vested in it by the FTC Act, the Federal Trade Commission (“FTC” or “Commission”), having reason to believe that Respondents Sanford Health, Sanford Bismarck (together with Sanford Health, “Sanford”), and Mid Dakota Clinic, P.C. (“MDC”), have executed a term sheet (“Term Sheet”) in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, which, if consummated would violate Section 7 of the Clayton Act, as amended, 15

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U.S.C. § 18, and Section 5 of the FTC Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint pursuant to Section 5(b) of the FTC Act, 15 U.S.C. § 45(b), and Section 11(b) of the Clayton Act, 15 U.S.C. § 21(b), stating its charges as follows:

I.**NATURE OF THE CASE**

1. Sanford and MDC are the two largest providers of adult primary care physician services, pediatric services, obstetrics and gynecology services, and general surgery physician services in Bismarck and Mandan, North Dakota. The proposed transaction between Respondents (“Transaction”) would create by far the largest—and, in one case, the only—group of physicians offering these services in Bismarck and Mandan.

2. The proposed Transaction will substantially lessen competition and cause significant harm to consumers. If Respondents consummate the Transaction, healthcare costs will rise, and the incentive to increase service offerings and improve the quality of healthcare will diminish.

3. Sanford and MDC are each other’s closest competitor in the Bismarck-Mandan area. Sanford describes MDC as its “major competitor for primary care” and “main clinical competitor” in the Bismarck-Mandan area. MDC views Sanford as a significant competitor that threatens its market share in the Bismarck-Mandan area, describing it as “a demon to deal with competitively” and observing that “combining with them would put us in the dominant health care system for quite a while.” Respondents also directly respond to one another by purchasing new equipment, updating technology, expanding services, recruiting high-quality physicians, and providing patients with convenient and accessible physician and surgical services.

4. The Transaction will substantially lessen competition in the markets for adult primary care physician services (“adult PCP services”), pediatric physician services (“pediatric services”), obstetrics and gynecology physician services (“OB/GYN services”), and general surgery physician services sold and provided to commercial payers and their insured members (together, the “relevant services”). The relevant geographic market in which to analyze the effects of the Transaction is an area no broader than the four-county Bismarck, ND Metropolitan Statistical Area (the “Bismarck-Mandan area”).

5. Respondents are the two largest providers of the relevant services in the Bismarck-Mandan area. Post-Transaction, Respondents would control over 75% of the market for adult PCP services, over 80% of the market for pediatric services, over 85% of the market for OB/GYN services, and 100% of the market for general surgery physician services, by physician headcount, in the Bismarck-Mandan area. The Transaction significantly increases concentration in already highly concentrated markets, making it presumptively unlawful under the 2010 U.S. Department of Justice and Federal Trade Commission Horizontal Merger Guidelines (“Merger Guidelines”).

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6. Today, Sanford and MDC compete for inclusion in commercial payers' provider networks. Without either of these physician groups, it would be very difficult for commercial payers to market a health plan provider network to employers with employees living in the Bismarck-Mandan area. Competition between Sanford and MDC results in lower prices, higher quality, and greater services offerings.

7. By eliminating competition between Sanford and MDC, the Transaction is likely to increase Respondents' bargaining leverage with commercial payers, and enhance Respondents' ability to negotiate more favorable reimbursement terms, including reimbursement rates (i.e., prices). Faced with higher rates and other less favorable terms, commercial payers will have to pass on those higher healthcare costs to employers and their employees in the form of increased premiums and, potentially, higher co-pays, deductibles, or other out-of-pocket expenses. The merged firm will also have a diminished incentive to expand services, acquire new technology, and improve quality and access for patients in the Bismarck-Mandan area.

8. Entry or expansion by other providers into the relevant services will not likely be timely or sufficient to offset the competitive harm that will likely result from the Transaction. It will take [REDACTED] for CHI St. Alexius Health ("CHI St. Alexius")—a vertically integrated healthcare provider in Bismarck and Mandan with only minimal service line overlap with MDC—to enter or reposition sufficient to offset the potential competitive harm from the Transaction. Smaller, independent physician groups cannot recruit and accommodate new physicians on a necessary scale to counteract or constrain post-Transaction price increases or quality and service decreases, and new independent physicians or large healthcare organizations from outside the Bismarck-Mandan area are unlikely to enter *de novo*.

9. Respondents' speculative efficiency and quality-of-care claims are unsubstantiated, not merger-specific, and not cognizable. Even assuming Respondents' purported efficiencies were cognizable, they are far outweighed by the Transaction's potential harm and would not justify the Transaction.

II.

BACKGROUND

A.

Jurisdiction

10. Respondents, and each of their relevant operating entities and parent entities, are, and at all relevant times have been, engaged in commerce or in activities affecting "commerce" as defined in Section 4 of the FTC Act, 15 U.S.C. § 44, and Section 1 of the Clayton Act, 15 U.S.C. § 12.

11. The Transaction constitutes an acquisition subject to Section 7 of the Clayton Act, 15 U.S.C. § 18.

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B.**Respondents**

12. Respondent Sanford Bismarck is a North Dakota not-for-profit corporation and vertically integrated healthcare delivery system headquartered at 300 N. 7th Street, Bismarck, North Dakota 58501. Sanford Bismarck is a wholly-owned subsidiary of Respondent Sanford Health, a not-for-profit corporation. Together and with other controlled corporations, Sanford Bismarck and Sanford Health constitute and operate Sanford. In the cities of Bismarck and Mandan, North Dakota, Sanford operates Sanford Bismarck Medical Center, a 217-bed general acute care hospital and Level II trauma center offering inpatient and outpatient services; eight clinics that provide primary care services; and a number of specialty clinics. Sanford employs approximately 160 primary care and specialist physicians who work in Bismarck or Mandan, including 36 adult PCPs, 4 pediatricians, 8 OB/GYNs, and 4 general surgeons. Sanford also employs approximately 100 advanced practice providers (“APPs”). Sanford is the largest private employer in the Bismarck-Mandan area and plans to recruit an additional [REDACTED] physicians over the next [REDACTED] years, including [REDACTED] to work in its clinic and facility locations in Bismarck and Mandan. Sanford Health, its Sanford Bismarck subsidiary, and other subsidiaries generated [REDACTED] in revenue for the fiscal year ending on June 30, 2016.

13. Sanford sells health insurance in four states, including North Dakota, under the operating name Sanford Health Plan. Sanford Health Plan has approximately [REDACTED] covered lives in North Dakota.

14. Respondent MDC is a for-profit, physician-owned professional corporation under North Dakota law that is headquartered at 401 N. 9th Street, Bismarck, North Dakota 58501. MDC is a multispecialty medical practice that employs 61 physicians who provide primary care and specialty practice medical services in Bismarck, including 23 adult PCPs, 6 pediatricians, 8 OB/GYNs, and 6 general surgeons. MDC also employs 19 APPs. Additionally, MDC operates six clinics, a Center for Women, and an ambulatory surgery center (“ASC”) in Bismarck. MDC is the twelfth-largest private employer in Bismarck. For the fiscal year ending on December 31, 2015, MDC generated [REDACTED] in revenue.

15. MDC’s 53 physician shareholders control Mid Dakota Medical Building Partnership, a partnership under North Dakota law that owns real estate and other assets, including two medical office buildings and a warehouse located in Bismarck. For the fiscal year ending on December 31, 2015, Mid Dakota Medical Building Partnership generated over [REDACTED] in income for its physician shareholders.

16. MDC holds a non-transferable 25% interest in PrimeCare Health Group (“PrimeCare”), a physician-hospital organization that contracts with commercial payers on behalf of MDC’s physicians. CHI St. Alexius holds the remaining 75% interest in PrimeCare.

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C.

The Transaction

17. In early 2015, MDC initiated discussions with Sanford regarding a potential affiliation. MDC also discussed a potential affiliation with CHI St. Alexius in 2015 and early 2016. In spring 2016, MDC's affiliation discussions with CHI St. Alexius terminated, and Respondents' affiliation discussions became exclusive. On August 22, 2016, Respondents signed a Term Sheet, according to which Sanford will purchase MDC's practice assets, including its clinics, ASC, laboratory, and diagnostic imaging equipment, as well as the real estate and other assets owned by the Mid Dakota Medical Building Partnership that are leased by MDC. Respondents have finalized a Stock Purchase Agreement for the sale of MDC's practice assets at

_____ and a Real Estate and Asset Purchase Agreement for the sale of the Mid Dakota Medical Building Partnership assets at _____

_____ The Transaction value includes _____

 _____ As part of the Transaction _____

III.

THE RELEVANT SERVICE MARKETS

18. The Transaction threatens substantial harm to competition in four relevant service markets: (1) adult PCP services; (2) pediatric services; (3) OB/GYN services; and (4) general surgery physician services. The appropriate product market in which to analyze the Transaction is the set of services for which a hypothetical monopolist could profitably impose a small but significant and non-transitory increase in price ("SSNIP"). This group of services constitutes an appropriate market when payers would accept a SSNIP rather than market a network that omitted the services of the hypothetical monopolist.

A.

Adult PCP Services Market

19. The Transaction threatens substantial competitive harm in the market for adult PCP services sold and provided to commercial payers and their insured members. This market encompasses services provided to commercially insured patients age 18 and over by physicians who are board-certified in internal medicine, family medicine, and general practice. Adult PCP services typically include routine medical services in an outpatient or office setting, such as physical exams, basic medical procedures, treatments of common illnesses and injuries, and long-term management of chronic conditions such as diabetes and hypertension.

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20. The adult PCP services market excludes obstetricians and gynecologists (“OB/GYNs”) because for many health plan enrollees, including all males, services offered by OB/GYN physicians are not viable substitutes for adult PCP services. The market also excludes services provided by pediatricians because pediatricians typically only treat patients under age 18, and thus do not compete with PCPs that treat adults. A payer would accept a SSNIP rather than market a network that omits adult PCP services even if that network also includes OB/GYN services and pediatric services.

B.**Pediatric Services Market**

21. The Transaction also threatens substantial competitive harm in the market for pediatric physician services sold and provided to commercial payers and their insured members. This market includes primary care services provided by pediatricians to children under the age of 18. Pediatricians receive additional training to treat medical conditions affecting pediatric patients, and physicians trained for other specialties generally do not have this required expertise and thus do not compete with pediatricians. A payer would accept a SSNIP rather than market a network that omits pediatricians.

C.**OB/GYN Services Market**

22. The Transaction also threatens substantial competitive harm in the market for OB/GYN physician services sold and provided to commercial payers and their insured female members. The market for OB/GYN services includes services provided by OB/GYN physicians related to women’s reproductive health, pregnancy, and childbirth. The OB/GYN services market excludes physicians who lack additional training in these services because the services provided by other types of physicians are not viable substitutes for OB/GYN services. A payer would accept a SSNIP rather than market a network that omits OB/GYN services.

D.**General Surgery Physician Services Market**

23. The Transaction also threatens substantial competitive harm in the market for general surgery physician services sold and provided to commercial payers and their insured members. The general surgery physician services market encompasses services offered by physicians who are board-certified exclusively in general surgery. General surgeons typically perform basic surgical procedures including abdominal surgeries, hernia repair surgeries, gallbladder surgeries, and appendectomies. Specialty surgeons who receive additional training and certification in particular types of procedures beyond the scope of general surgery training do not perform the same set of services as surgeons who are board-certified exclusively in general surgery, and therefore are excluded from the market. A payer would accept a SSNIP rather than market a network that omits general surgery physician services.

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IV.**THE RELEVANT GEOGRAPHIC MARKET**

24. The relevant geographic market in which to analyze the effects of the Transaction for each relevant service market is an area no larger than the four-county Bismarck, ND Metropolitan Statistical Area, which includes Burleigh, Morton, Oliver, and Sioux counties. The Bismarck-Mandan area covers a population of more than 125,000 people and includes the cities of Bismarck and Mandan, as well as rural areas and farming communities extending 40 to 50 miles outside of the two cities in every direction.

25. The appropriate geographic market in which to analyze the Transaction is the area where a hypothetical monopolist of the relevant services could profitably impose a SSNIP. If a hypothetical monopolist could impose a SSNIP, the boundaries of that geographic area are an appropriate geographic market.

26. Bismarck-Mandan area residents strongly prefer to obtain the relevant services close to where they live. Indeed, it would be very difficult for a payer to market successfully to employers with employees living in the Bismarck-Mandan area a health plan that did not include PCPs, pediatricians, OB/GYNs, or general surgeons located within the Bismarck-Mandan area. A hypothetical monopolist that controlled all providers of any relevant service in the Bismarck-Mandan area could profitably impose a SSNIP on payers. The Bismarck-Mandan area is therefore a properly defined geographic market.

27. The Bismarck-Mandan area is the main area of competition between Sanford and MDC in each relevant service market. It also comprises the population center from where Respondents draw a significant portion of their patients. Approximately 95% of patients living in the Bismarck-Mandan area stay within the Bismarck-Mandan area for the relevant services. Quantitative and qualitative evidence, including Respondents' own executives and ordinary course documents, confirm that the Bismarck-Mandan area is the relevant geographic market in which to analyze the effects of the Transaction.

V.**MARKET STRUCTURE AND THE TRANSACTION'S PRESUMPTIVE ILLEGALITY**

28. Sanford and MDC are the two largest providers of each of the relevant services in the Bismarck-Mandan area.

29. Under relevant case law and the Horizontal Merger Guidelines, the Transaction is presumptively unlawful in all four relevant service markets. Based on physician headcount in the Bismarck-Mandan area, post-Transaction, Respondents will control 77% of the adult PCP services market, 83% of the pediatric services market, 88% of the OB/GYN services market, and 100% of the general surgery physician services market.

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30. The courts and antitrust agencies commonly use the Herfindahl-Hirschman Index (“HHI”) to measure market concentration. The HHI is calculated by totaling the squares of the market shares of every firm in the relevant market. Under the Merger Guidelines, a market with an HHI that exceeds 2,500 points is considered highly concentrated. A merger or acquisition is presumed likely to create or enhance market power—and is presumptively illegal—when the post-acquisition HHI exceeds 2,500 points and the merger or acquisition increases the HHI by more than 200 points. Here, the market concentration levels far exceed these thresholds. As measured by physician headcount in the Bismarck-Mandan area, each of the relevant service markets is already highly concentrated today, and the Transaction further concentrates these markets. The following tables summarize the market shares and HHI figures for each relevant service market.

ADULT PCP SERVICES			
Preliminary Market Shares by Physician Headcount for Providers Within Bismarck-Mandan Area			
Provider	Adult PCP Headcount	Market Share	
		Pre-Transaction	Post-Transaction
Sanford Bismarck	36	47%	77%
Mid Dakota Clinic	23	30%	
CHI St. Alexius Health	6	8%	8%
UND Center for Family Medicine	6	8%	8%
Independent Doctors, P.C.	3	4%	4%
Baker Family Medicine	1	1%	1%
Glen Ullin Family Clinic	1	1%	1%
Jeffrey Smith, MD	1	1%	1%
HHI		3,220	6,013
Change in HHI		2,793	

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PEDIATRIC SERVICES			
Preliminary Market Shares by Physician Headcount for Providers Within Bismarck-Mandan Area			
Provider	Pediatrician Headcount	Market Share	
		Pre-Transaction	Post-Transaction
Sanford Bismarck	4	33%	83%
Mid Dakota Clinic	6	50%	
Independent Doctors, P.C.	1	8%	8%
UND Center for Family Medicine	1	8%	8%
HHI		3,750	7,083
Change in HHI		3,333	

OB/GYN SERVICES				
Preliminary Market Shares by Physician Headcount for Providers Within Bismarck-Mandan Area				
Provider	OB/GYN Headcount		Market Share	
	Pre-Transaction	Post-Transaction	Pre-Transaction	Post-Transaction
Sanford Bismarck	8	15	47%	88%
Mid Dakota Clinic	8		47%	
UND Center for Family Medicine	1	1	6%	6%
CHI St. Alexius Health ¹	0	1	0%	6%

¹ CHI St. Alexius's post-Transaction headcount and market share consist of Dr. Jan Bury, a current MDC OB/GYN who is moving to CHI St. Alexius post-Transaction. She is counted as an MDC physician for purposes of calculating the pre-Transaction HHI, and counted as a CHI St. Alexius physician for purposes of calculating the post-Transaction HHI.

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HHI	4,464	7,855
Change in HHI	3,391	

GENERAL SURGERY PHYSICIAN SERVICES			
Preliminary Market Shares by Physician Headcount for Providers Within Bismarck-Mandan Area			
Provider	General Surgeon Headcount	Market Share	
		Pre-Transaction	Post-Transaction
Sanford Bismarck	4	40%	100%
Mid Dakota Clinic	6	60%	
HHI		5,200	10,000
Change in HHI		4,800	

VI.

ANTICOMPETITIVE EFFECTS

A.

Competition Among Healthcare Providers Benefits Consumers

31. Competition between healthcare providers occurs in two distinct but related stages. First, providers compete for inclusion in commercial payers' health plan provider networks. Second, in-network providers compete to attract patients, including commercial payers' health plan members.

32. In the first stage of provider competition, providers compete to be included in commercial payers' health plan provider networks. To become an in-network provider, a provider negotiates with a commercial payer and, if mutually agreeable terms can be reached, enters into a contract. The financial terms under which a provider is reimbursed for services rendered to a health plan's members are a central component of those negotiations, regardless of whether reimbursements are based on fee-for-service contracts, risk-based contracts, or other types of contracts.

33. In-network status benefits a provider by giving it preferential access to the health plan's members. Health plan members typically pay far less to access in-network providers than those out-of-network. Thus, all else being equal, an in-network provider will attract more

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patients from a particular health plan than an out-of-network one. This dynamic motivates providers to offer lower rates and other more favorable terms to commercial payers to win inclusion in their networks.

34. From the payers' perspective, having providers in-network is beneficial because it enables the payer to create a health plan provider network in a particular geographic area that is attractive to current and prospective members, typically local employers and their employees.

35. Under a fee-for-service payment model, a provider receives payment (i.e., reimbursement) for the services it provides to a commercial payer's health plan members. Such payment is typically on a per-service, per-diem, or discount-off-charges method. Under a full risk-based payment model, a provider is reimbursed a fixed payment for all services provided to a particular member. As a result, the provider has an incentive to reduce overall utilization of services by patients. Regardless of whether a contract's reimbursement method is based on fee-for-service terms, risk-based terms, or some combination of both, relative bargaining leverage plays a key role in negotiations between commercial payers and providers.

36. A critical determinant of the relative bargaining positions of a provider and a commercial payer during contract negotiations is whether other, nearby, comparable providers are available to the commercial payer and its health plan members as alternatives in the event of a negotiating impasse. Alternative providers limit a provider's bargaining leverage and thus constrain its ability to obtain more favorable reimbursement terms from commercial payers. The more attractive these alternative providers are to a commercial payer's health plan members in a local area, the greater the constraint on that provider's bargaining leverage. Where there are few or no meaningful alternatives, a provider will have greater bargaining leverage to demand and obtain higher reimbursement rates and other more favorable reimbursement terms.

37. A merger between providers that are close substitutes in the eyes of commercial payers and their health plan members therefore tends to increase the merged entity's bargaining leverage. Such mergers lead to higher reimbursement rates by eliminating an available alternative for commercial payers. This increase in leverage is greater when the merging providers are closer substitutes for (and competitors to) each other. This is true even where other factors, such as a payer's leverage as a result of having high market share, may impact the pre-merger bargaining dynamic. Preexisting leverage for the payer does not eliminate the concern about an increase in the post-merger bargaining leverage of the merged entity.

38. Changes in the reimbursement terms negotiated between a provider and a commercial payer, including increases in reimbursement rates, significantly impact the commercial payer's health plan members. "Self-insured" employers rely on a commercial payer for access to its health plan provider network and negotiated rates, but these employers pay the cost of their employees' healthcare claims directly and thus bear the full and immediate burden of any rate increase in the healthcare services used by their employees. Employees may bear some portion of the cost through premiums, co-pays, and deductibles. "Fully-insured" employers pay premiums to commercial payers—and employees pay premiums, co-pays, and deductibles—in exchange for the commercial payer assuming financial responsibility for paying

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provider costs generated by the employees' use of provider services. When provider rates increase, commercial payers pass on these increases to their fully-insured customers in the form of higher premiums, co-pays, and deductibles.

39. In the second stage of provider competition, providers compete to attract patients to their facilities. Because health plan members often face similar out-of-pocket costs for in-network providers, providers in the same network compete to attract patients on non-price features—that is, by offering better quality of care, amenities, convenience, and patient satisfaction than their competitors. Providers also compete on these non-price dimensions to attract patients covered by Medicare and Medicaid, and other patients without commercial insurance. A merger of competing providers eliminates that non-price competition and reduces the merged entity's incentive to improve and maintain quality. Providers also compete on price terms in this second stage of competition in circumstances when patients pay the full cost of the procedure out of pocket, regardless of whether they are commercially insured.

B.**The Transaction Would Eliminate Beneficial Head-to-Head Competition and Increase Bargaining Leverage**

40. Sanford and MDC are each other's closest competitor in the Bismarck-Mandan area for each of the relevant services. Sanford's ordinary course documents reflect the close competition between the Respondents. Sanford believes MDC is its "main clinical competitor" and "major competitor for primary care" in the Bismarck-Mandan area and identifies MDC as its only competitor for pediatric services in the Bismarck-Mandan area. Sanford also considers MDC's OB/GYN department to be Sanford's "top competitor" delivering babies in the Bismarck-Mandan area and describes MDC's general surgeons as Sanford's "primary competition in Bismarck" for bariatric procedures. Sanford's internal marketing and market research documents closely monitor MDC service offerings and routinely compare MDC's service offerings to its own, particularly in women's services and general surgery, in an effort to assess Sanford's "competitive advantage" over MDC.

41. Similarly, MDC considers Sanford to be a significant competitor and a threat to its market share in the relevant service markets. MDC expressed concern that Sanford "put a large target on [MDC's] finances and market share" and emphasized a need to "work on retaining the market share" in the face of Sanford "making some inroads into OB." Additionally, the results of a 2015 MDC strategy assessment conducted by MDC's marketing consulting focused on Sanford as MDC's closest clinical competitor in the Bismarck-Mandan area. MDC's Chief Financial Officer observed that "Sanford is going to be a demon to deal with competitively. . . . Combining with them would put us in the dominant health care system for quite a while."

42. Respondents track and respond to each other's marketing campaigns and advertising spending, which neither Respondent does with respect to other providers. Sanford and MDC are also each other's closest competitor to recruit adult PCPs, pediatricians, OB/GYNs, and general surgeons, and are the two practices in the Bismarck-Mandan area that

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graduating residents and physicians in these service lines relocating to the Bismarck-Mandan area look to for employment. Because Sanford and MDC are close substitutes for each of the relevant services, the Transaction would eliminate significant head-to-head competition between the Respondents.

43. Diversion analysis, a standard economic tool that uses data on where patients receive healthcare services to determine the extent to which providers are substitutes, confirms that Sanford and MDC are close competitors. Preliminary diversion analysis shows that if all Sanford physicians providing adult PCP services were not available to Bismarck-Mandan area patients, approximately 77% of their patients would seek care at MDC. Correspondingly, if all MDC physicians providing adult PCP services were not available to Bismarck-Mandan area patients, approximately 82% of their patients would seek care at Sanford. In other words, each is by far the next-best alternative for patients of the other. Diversions for adult PCP services and other relevant services are shown in the table below:

Service	Diversion from Sanford to MDC	Diversion from MDC to Sanford
Adult PCP	77%	82%
Pediatric	90%	94%
OB/GYN	77%	70%
General Surgery	96%	98%

44. Offering provider coverage in the Bismarck-Mandan area is essential for a commercial payer to market a health plan provider network successfully to employers with employees in the Bismarck-Mandan area. At present, Sanford and MDC serve as the key providers of the relevant services for consumers living in the Bismarck-Mandan area, and either one can support a marketable health plan provider network. For example, 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. This substitutability leads to lower prices. When developing a provider network for the North Dakota Public Employees Retirement System (“NDPERS”), Sanford Health Plan

Commercial payers and employers do not view other providers in the Bismarck-Mandan area as adequate substitutes for Sanford or MDC. Consistent with that view, Bismarck-Mandan area residents strongly prefer that their health plan networks include at least one of the Respondents.

45. By combining the two largest providers of the relevant services in the Bismarck-Mandan area, the Transaction would increase Respondents’ bargaining leverage in contract

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negotiations with commercial payers because employers in the Bismarck-Mandan area would have little, if any, interest in a health plan network that excluded the combined system. Defendants' increased bargaining leverage would enhance their ability to negotiate higher reimbursement rates and more favorable reimbursement terms in payer contracts. Commercial payers would have little choice but to accept the reimbursement terms demanded by the merged system or exclude the merged system and risk having their network fail.

46. Today, when constructing provider networks for Bismarck-Mandan area employers, commercial payers treat Sanford and MDC (as part of PrimeCare) as substitutes—some include Sanford while excluding MDC and PrimeCare, and others exclude Sanford while including MDC and PrimeCare. If the merger is consummated, virtually every provider network marketed to consumers in the Bismarck-Mandan area will need to include the combined entity.

C.**The Transaction Would Eliminate Vital Quality and Service Competition**

47. Competition drives providers to invest in quality initiatives and new technologies to differentiate themselves from competitors. Sanford and MDC compete with one another across various non-price dimensions, which has provided patients in the Bismarck-Mandan area with higher quality care and more extensive healthcare service offerings. Sanford and MDC have substantially invested in acquiring new technology, expanding their services and facilities, and improving patient access to compete against one another. The Transaction would eliminate this competition.

48. Sanford and MDC have invested in new technology to attract patients. In 2014, Sanford acquired 3D mammography technology, a state-of-the art technology that provides breast tissue imaging superior to the existing 2D technology. Sanford's capital expense and marketing documents explicitly noted the need to acquire the technology to compete with MDC. MDC subsequently acquired the same 3D mammography technology, and "put a million dollars into 3D [mammography technology] . . . [b]ecause [patients] were walking over to Sanford." Since acquiring the technology, Respondents have continued to compete for 3D mammography patients along several dimensions, including price, access, and breast care services. Similarly, Sanford invested in a tower-free hysteroscopy system to transition certain gynecological procedures from an operating room to a clinical setting. Sanford made this investment to remain competitive with MDC, which offered these procedures in an office setting. Sanford also promotes its use of the da Vinci robotic surgery system for gynecological surgeries as a differentiator between Sanford and MDC's OB/GYN departments, and MDC acknowledged that Sanford's adoption of this technology attracted patients from MDC to Sanford. Ultimately, MDC encouraged CHI St. Alexius Medical Center, the only other acute care hospital in Bismarck apart from Sanford Bismarck Medical Center, to invest in the robot technology and two MDC OB/GYN physicians trained to use the robot in order to compete with Sanford's OB/GYNs.

49. Sanford and MDC have also improved patient access and convenience options in order to attract patients. Both Respondents operate walk-in clinics to provide patients with

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convenient options for acute care episodes and utilize the clinics as a way to attract and retain patients. MDC opened its Today Clinic specifically “to answer [Sanford]’s walk-ins; to increase [MDC’s] market share and to provide [patient] access.” Both Respondents post wait times on their respective websites as a transparent display of the convenience offered by their walk-in clinics. MDC has observed that “Sanford consistently promotes their SameDay [program]” and expressed a desire to promote its own program to attract patients. Similarly, both Respondents offer sports physicals for school-aged children in their walk-in clinics as a convenient and less expensive alternative to comprehensive child wellness/preventative exams. MDC specifically monitors Sanford’s sports physical offerings when developing its own sports physical policy. In June 2016, for example, MDC matched Sanford’s price for sports physicals. To attract patients and gain a competitive edge over Sanford, MDC also offers services and amenities not available at Sanford, such as MDC’s Center for Women, which provides women patients access to multiple services in one location, and a comprehensive breast program with the only breast fellowship-trained radiologist in North Dakota, who coordinates patient care with other specialists such as surgeons and oncologists.

50. Patients benefit from this direct competition in the quality of care and services offered to them by Respondents. Because the merged entity will control the majority of the relevant services in the Bismarck-Mandan area, it will face limited outside competition for patients seeking such services. Thus, the Transaction will dampen the merged firm’s incentive to compete on quality of care and service offerings, to the detriment of all patients who use these providers, including commercially insured, Medicare, Medicaid, and self-pay patients. As one longtime MDC physician put it:

competition is good and maybe no more important place than in health care, that it keeps us all striving to be better to make the best possible scenario for the patient and not settle for mediocre when that would be easier if you weren’t competing with someone. . . . [W]hen you have competition it makes you step up and try to be better and provide excellent quality without just settling for average, which you can get away with when there is no one to compete with. . . . I don’t feel like I want to drop to a mediocre standard of care, after working my whole life just to build a good reputation, I don’t want to be just good enough. I want to be good and competitive. And I think that monopoly in health care is not a good thing.

VII.

ENTRY BARRIERS

51. Entry by new market participants into the relevant service markets in the Bismarck-Mandan area is unlikely to occur in a timely or sufficient manner to deter or counteract the likely anticompetitive effects of the Transaction. Repositioning or expansion by current market participants is also unlikely to offset fully the Transaction’s likely harm to competition for the relevant services in the Bismarck-Mandan area.

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A.**Adult PCP and Pediatric Services Entry Will Not Be Timely or Sufficient**

52. Existing adult PCP and pediatric practices in the Bismarck-Mandan area are unlikely to expand sufficiently and in a timely manner to offset the anticompetitive effects of the Transaction. The Bismarck-Mandan area's geographic location, including its cold climate and distance from larger metropolitan areas, makes it difficult for an existing competitor to attract and retain physicians, including adult PCPs and pediatricians, from outside of the area. Even if an existing competitor successfully recruited adult PCPs and pediatricians, it would be challenging for it to attract the substantial number of patients in the Bismarck-Mandan area needed to be a financially viable competitor. It would take [REDACTED] for CHI St. Alexius, the only remaining market participant positioned to enter or reposition in the Bismarck-Mandan area, to hire enough physicians, open adequate clinic space, and establish a presence in the area sufficient to replace the adult PCP and pediatric services offered by MDC. The other existing adult PCP and pediatric practices in the Bismarck-Mandan area lack the resources or ability to expand to the magnitude where they could counteract or constrain the anticompetitive effects of the Transaction.

53. New entry by independent physicians into the adult PCP or pediatric services markets in the Bismarck-Mandan area is also unlikely because of the significant financial challenges and risk involved in establishing an independent adult PCP or pediatric practice in the Bismarck-Mandan area, including renting or buying office space, renting or purchasing medical and office equipment, hiring administrative staff, investing in an electronic medical records system, and purchasing malpractice insurance. A local labor shortage in the Bismarck-Mandan area makes starting an independent adult PCP or pediatric practice even more challenging. Moreover, new physicians finishing their residency programs often have substantial debt and lack the financial resources and experience to open an independent practice. After opening an office, it likely would take each adult PCP or pediatrician new to the Bismarck-Mandan area two years or longer to establish a patient base, and substantial time and money for a practice to become self-sustaining and a meaningful competitor, posing additional hurdles to new entrants.

B.**OB/GYN Services Entry Will Not Be Timely or Sufficient**

54. New entry or expansion into the OB/GYN services market in the Bismarck-Mandan area will not be timely or sufficient to offset the Transaction's competitive harm. In addition to the financial and practical challenges that adult PCPs and pediatricians face in starting an independent practice, OB/GYNs need access to a hospital in order to provide the full scope of OB/GYN services, and must participate in or provide for call coverage for their patients in the hospital. A solo OB/GYN would have to be on call all the time, which, if even feasible, would likely lower the quality of care. To have a reasonable call rotation, a practice needs a minimum of four to five OB/GYNs. It would take [REDACTED] for CHI St. Alexius, the only remaining market participant positioned to enter or reposition in the Bismarck-Mandan

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area, to recruit five OB/GYNs to a new practice and open an OB/GYN clinic in the Bismarck-Mandan area, and up to another two years for each new OB/GYN to build a patient base.

C.

General Surgery Physician Services Entry Will Not Be Timely or Sufficient

55. Entry or expansion into the general surgery physician services market in the Bismarck-Mandan area is unlikely to be timely and sufficient to offset any competitive harm that results from the Transaction. Sanford and MDC employ the only general surgeons in the Bismarck-Mandan area. In addition to the challenges that adult PCPs, pediatricians, and OB/GYNs face starting a practice in the Bismarck-Mandan area, general surgeons need a source of patient referrals. An independent general surgeon in the Bismarck-Mandan area would be unlikely to receive referrals because PCPs and other physicians are likely to refer patients to affiliated general surgeons. As with OB/GYNs, call requirements for general surgeons make it unlikely that a general surgeon would operate a solo practice and difficult for a hospital or physician group to recruit a single general surgeon to start a general surgery group. A general surgery physician practice needs a minimum of four to five general surgeons to provide call coverage, and it would take [REDACTED] for CHI St. Alexius, the only remaining market participant positioned to enter or reposition in the Bismarck-Mandan area, to recruit a practice of five general surgeons.

VIII.

EFFICIENCIES

56. Respondents' claimed efficiencies do not outweigh the Transaction's likely harm to competition. The purported benefits would not enhance competition for the relevant services and fall far short of the cognizable efficiencies needed to outweigh the Transaction's likely significant harm to competition in the Bismarck-Mandan area.

57. Respondents have projected several categories of cost savings that will result from the Transaction, but many of these estimated cost savings are unsubstantiated and reflect speculative assumptions. Even if the claimed efficiencies were substantiated and achievable, many are not merger-specific. MDC could achieve many of the claimed cost savings by affiliating with a suitable and interested alternative partner far less harmful to competition. In any event, Respondents' projected cost savings are not nearly of the magnitude necessary to justify the Transaction in light of its potential to harm competition.

58. Respondents' other efficiency claims, including those relating to quality improvements, are speculative and unsubstantiated. The claimed quality efficiencies are also not merger-specific because they could be accomplished absent the Transaction. Sanford and MDC already are high-quality providers and have presented no evidence demonstrating how the Transaction will improve the quality of care either Respondent provides. In fact, Sanford already has engaged in efforts to achieve some of these purported quality improvements independent of

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the Transaction, such as recruiting and retaining specialists and subspecialists as well as launching or expanding service lines.

IX.**VIOLATION****COUNT I – ILLEGAL AGREEMENT**

59. The allegations of Paragraphs 1 through 58 above are incorporated by reference as though fully set forth herein.

60. The Term Sheet constitutes an unfair method of competition in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

COUNT II – ILLEGAL ACQUISITION

61. The allegations of Paragraphs 1 through 58 above are incorporated by reference as though fully set forth herein.

62. The Transaction, if consummated, may substantially lessen competition in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and is an unfair method of competition in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

NOTICE

Notice is hereby given to the Respondents that the twenty-eighth day of November, 2017, at 10:00 a.m., is hereby fixed as the time, and the Federal Trade Commission offices at 600 Pennsylvania Avenue, N.W., Room 532, Washington, D.C. 20580, as the place, when and where an evidentiary hearing will be had before an Administrative Law Judge of the Federal Trade Commission, on the charges set forth in this complaint, at which time and place you will have the right under the Federal Trade Commission Act and the Clayton Act to appear and show cause why an order should not be entered requiring you to cease and desist from the violations of law charged in the complaint.

You are notified that the opportunity is afforded you to file with the Commission an answer to this complaint on or before the fourteenth (14th) day after service of it upon you. An answer in which the allegations of the complaint are contested shall contain a concise statement of the facts constituting each ground of defense; and specific admission, denial, or explanation of each fact alleged in the complaint or, if you are without knowledge thereof, a statement to that effect. Allegations of the complaint not thus answered shall be deemed to have been admitted.

If you elect not to contest the allegations of fact set forth in the complaint, the answer shall consist of a statement that you admit all of the material facts to be true. Such an answer shall constitute a waiver of hearings as to the facts alleged in the complaint and, together with the

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complaint, will provide a record basis on which the Commission shall issue a final decision containing appropriate findings and conclusions and a final order disposing of the proceeding. In such answer you may, however, reserve the right to submit proposed findings and conclusions under Rule 3.46 of the Commission's Rules of Practice for Adjudicative Proceedings.

Failure to file an answer within the time above provided shall be deemed to constitute a waiver of your right to appear and to contest the allegations of the complaint and shall authorize the Commission, without further notice to you, to find the facts to be as alleged in the complaint and to enter a final decision containing appropriate findings and conclusions, and a final order disposing of the proceeding.

The Administrative Law Judge shall hold a prehearing scheduling conference no later than ten (10) days after the Respondents file their answers. Unless otherwise directed by the Administrative Law Judge, the scheduling conference and further proceedings will take place at the Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Room 532, Washington, D.C. 20580. Rule 3.21(a) requires a meeting of the parties' counsel as early as practicable before the pre-hearing scheduling conference (but in any event no later than five (5) days after the Respondents file their answers). Rule 3.31(b) obligates counsel for each party, within five (5) days of receiving the Respondents' answers, to make certain initial disclosures without awaiting a discovery request.

NOTICE OF CONTEMPLATED RELIEF

Should the Commission conclude from the record developed in any adjudicative proceedings in this matter that the Transaction challenged in this proceeding violates Section 5 of the Federal Trade Commission Act, as amended, and/or Section 7 of the Clayton Act, as amended, the Commission may order such relief against Respondents as is supported by the record and is necessary and appropriate, including, but not limited to:

1. If the Transaction is consummated, divestiture or reconstitution of all associated and necessary assets, in a manner that restores two or more distinct and separate, viable and independent businesses in the relevant service and geographic markets, with the ability to offer such products and services as Sanford and MDC were offering and planning to offer prior to the Transaction.
2. A prohibition against any transaction between Sanford and MDC that combines their businesses in the relevant markets, except as may be approved by the Commission.
3. A requirement that, for a period of time, Sanford and MDC provide prior notice to the Commission of acquisitions, mergers, consolidations, or any other combinations of their businesses in the relevant markets with any other company operating in the relevant markets.
4. A requirement to file periodic compliance reports with the Commission.

Final Order

5. Any other relief appropriate to correct or remedy the anticompetitive effects of the transaction or to restore MDC as a viable, independent competitor in the relevant service and geographic markets.

IN WITNESS WHEREOF, the Federal Trade Commission has caused this complaint to be signed by its Secretary and its official seal to be hereto affixed, at Washington, D.C., this twenty-first day of June, 2017.

By the Commission.

ORDER DISMISSING COMPLAINT

On June 21, 2017, the Commission issued an administrative Complaint alleging that Respondents Sanford Health, Sanford Bismarck (collectively Sanford), and Mid Dakota Clinic, P.C. (MDC) had executed a term sheet in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45. The Complaint further alleged that the acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

On June 22, 2017, pursuant to Section 13(b) of the FTC Act and Section 16 of the Clayton Act, the Commission¹ filed a complaint in the United States District Court for the District of North Dakota (District Court) seeking a temporary restraining order and a preliminary injunction to prevent Respondents from consummating the proposed acquisition until final resolution of this administrative proceeding. On December 13, 2017, the District Court granted the Commission's motion for a preliminary injunction. After an appeal by Sanford and MDC, the United States Court of Appeals for the Eighth Circuit affirmed the District Court's decision on June 13, 2019.

Complaint Counsel and Respondents have now filed a joint motion to dismiss the Complaint on the grounds that Respondents do not intend to seek further judicial review of the Eighth Circuit's decision and will abandon the proposed transaction.²

In light of Respondents' decision to abandon the proposed transaction, the most important elements of the relief set out in the Notice of Contemplated Relief in the Complaint have been accomplished without the need for further administrative litigation.³ For the foregoing

¹ The State of North Dakota was co-Plaintiff in this action.

² See Joint Motion to Dismiss Complaint, Ex. A, 9-10 (*filed* June 25, 2019).

³ See, e.g., *In the Matter of Wilh. Wilhemsen Holding ASA, et al.*, Docket No. 9380, Order Dismissing Complaint (July 31, 2018); *In the Matter of CDK Global, Inc., et al.*, Docket No. 9380, Order Dismissing Complaint (Mar. 26,

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reasons, the Commission has determined that the public interest warrants dismissal of the Complaint in this matter. The Commission has determined to do so without prejudice, however, because it is not reaching a decision on the merits.

Accordingly,

IT IS ORDERED THAT the Complaint in this matter be, and it hereby is, dismissed without prejudice.

By the Commission.

2018); *In the Matter of The JM Smucker Company and Conagra Brands, Inc.*, Docket No. 9381, Order Dismissing Complaint (Mar. 8, 2018); *In the Matter of DraftKings, Inc. and FanDuel Limited*, Docket No. 9375, Order Dismissing Complaint (July 14, 2017); *In the Matter of Advocate Health Care Network, Advocate Health and Hospitals Corporation, and NorthShore University HealthSystem*, Docket No. 9365, Order Dismissing Complaint (Mar. 20, 2017).

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**STAFFORDSHIRE PROPERTY MANAGEMENT, LLC,
AND
AARON FISCHER**

CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF SECTION 5 OF THE FEDERAL
TRADE COMMISSION ACT AND SECTION 2(c) OF THE CONSUMER REVIEW FAIRNESS ACT

*Docket No. C-4682; File No. 182 3084
Complaint, July 25, 2019 – Decision, July 25, 2019*

This consent order addresses Staffordshire Property Management, LLC and Aaron Fischer's use of non-disparagement provisions in consumer form contracts in the course of processing the applications of prospective tenants to rent residential properties that respondents manage. The complaint alleges that the respondents violated Section 2(c) of the Consumer Review Fairness Act ("CRFA") by offering to consumers form contracts that contained non-disparagement provisions made void by Section 2(b) of the CRFA. The consent order prohibits, in the sale or leasing of any good or service, the respondents from: offering to any prospective customer a contract, or offering to any customer a renewal contract, that includes a review-limiting term; requiring that a customer accept such a term as a condition of the respondents' fulfillment of their obligations under contracts entered into before the effective date of the order; or attempting to enforce or assert the validity of such a term in customer contracts entered into before the effective date of the order.

Participants

For the *Commission*: Carl H. Settlemyer.

For the *Respondents*: Arthur Hawgood and William Moran II, Hawgood, Hawgood & Moran LLP.

COMPLAINT

The Federal Trade Commission, having reason to believe that Staffordshire Property Management, LLC and Aaron Fischer, individually and as owner and manager of Staffordshire Property Management, LLC (collectively, "Respondents") have violated the Consumer Review Fairness Act of 2016, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Staffordshire Property Management, LLC ("Staffordshire") is a Maryland limited liability company with its principal office or place of business at 108 East Preston Street, Apt. 1, Baltimore, Maryland 21202. Staffordshire operates a residential property management service and processes consumer applications to rent properties that it manages.

2. Respondent Aaron Fischer is owner and manager of Staffordshire. Individually or in concert with others, he controlled or participated in the acts and practices of Staffordshire, including the acts and practices alleged in this complaint. His principal office or place of business is the same as that of Staffordshire.

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3. The acts and practices of Respondents alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

Course of Conduct

4. Between approximately February 2016 and October 2018, Respondents used, in their form contracts offered to hundreds of prospective renters in the course of processing their applications to rent properties that Respondents manage, the following provision:

The Applicant consents, whether approved or not approved, to hold and maintain the terms, conditions, and communications related to Staffordshire Property Management, this application, and application process in strict confidence, and specifically agrees not to disparage Staffordshire Property Management, and any of its employees, managers, or agents in any way, and also agrees not to communicate, publish, characterize, publicize or disseminate, in any manner, any terms, conditions, opinions and communications related to Staffordshire Property Management, this application, or the application process. . . . Any breach of such confidentiality will support a cause of action and will entitle Staffordshire Property Management to recover any and all damages from such a breach.

A copy of the Staffordshire “Authorization, Agreement & Release Consent Form” that includes this language is attached as Exhibit A hereto. Respondents’ form contracts were in effect on or after December 14, 2017.

VIOLATION OF THE CONSUMER REVIEW FAIRNESS ACT

5. The Consumer Review Fairness Act of 2016 (“CRFA”), P.L. 114-258, 15 U.S.C. § 45b, was enacted on December 14, 2016. As of March 14, 2017, Section 2(b) of the CRFA renders void, and Section 2(c) of the CRFA prohibits the offering of, provisions in form contracts that: prohibit or restrict individual consumers’ ability to communicate reviews, performance assessments, and similar analyses about a seller’s goods, services, or conduct; or that impose a penalty or fee against individual consumers who engage in such communications. 15 U.S.C. §§ 45b(a)(2), 45b(b)(1), and 45b(c).

6. The Commission is authorized to enforce Section 2(c) of the CRFA in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act, 15 U.S.C. §§ 41-58, were incorporated into and made a part of the CRFA. 15 U.S.C. § 45b(d)(2)(A). The Commission’s enforcement authority under the CRFA applies to contracts in effect on or after December 14, 2017. 15 U.S.C. § 45b(i)(2).

7. Pursuant to 15 U.S.C. § 45b(d)(1), a violation of 15 U.S.C. § 45b(c) shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under Section 18(a)(1)(B) of the FTC Act, 15 U.S.C. § 57a(a)(1)(B).

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Count I

8. As described in Paragraph 4 of this Complaint, Respondents have offered, in the course of selling their services, form contracts, as that term is defined in 15 U.S.C. § 45b(a)(3), that contained a provision made void by 15 U.S.C. § 45b(b)(1).

Therefore, the acts and practices set forth in Paragraph 4 of this Complaint occurring on or after March 14, 2017 violated Section 2(c) of the CRFA, 15 U.S.C. § 45b(c).

THEREFORE, the Federal Trade Commission this twenty-fifth day of July, 2019, has issued this Complaint against Respondent.

By the Commission.

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5. **Current Address:** _____
 Current Rent/Mortgage: _____ Current Landlord: _____
 Lease Start Date: _____ Lease End Date: _____
 Landlord Address: _____
 Landlord Phone #: _____ Landlord Email: _____
- Previous Address:** _____
 Previous Rent/Mortgage: _____ Previous Landlord: _____
 Lease Start Date: _____ Lease End Date: _____
 Landlord Address: _____
 Landlord Phone #: _____ Landlord Email: _____
6. **Personal reference:**
 Name: _____ Address: _____
 Telephone No: _____ Relationship: _____
7. Do you wish permission to have a pet: Yes _____ No _____
 If yes, what type and how many? _____
 Unless specifically agreed to in writing by the Landlord, no pets of any kind will be allowed on the Premises.
8. Have you ever been charged with a criminal offense: Yes _____ No _____
 Type of Offense (list all offenses): _____
 State(s): _____ Date of Offense(s): _____
 Have you ever been evicted: Yes _____ No _____ Date of Eviction: _____
 Have you ever been charged with Failure to Pay Rent: Yes _____ No _____
 Have you ever been charged with Breach of Lease: Yes _____ No _____
 Have you ever had wages or property garnished: Yes _____ No _____
9. Application Processing Fee: \$20.00 via PayPal. If initial portion of application is approved, an additional \$15 will be paid directly to Experian for processing a credit report. (Instructions will be e-mailed regarding how process payment).
10. **Terms and Conditions:**
 A. It is understood that the Processing Fee is not refundable.
 B. If the Landlord accepts this Application, either orally or in writing, Applicant(s) will be required to enter into a Lease in conformity with this Application on the Landlord's standard form of Lease Agreement (a copy of which has been made available for Applicant(s) to review), and pay a security deposit. Until the security deposit is paid and the Lease Agreement is signed by the Applicant(s), Landlord shall not be obligated to lease the Property to Applicant(s).

Complaint

AUTHORIZATION, AGREEMENT & RELEASE CONSENT FORM

The Applicant hereby affirms that the answers to the foregoing questions are true and correct and that the Applicant has not knowingly withheld any fact or circumstance which would, if disclosed, affect the Application unfavorably. The Applicant authorizes Staffordshire Property Management to secure, or secure from a consumer reporting agency, an investigative consumer report. This report may contain, but would not be limited to, consumer credit, rental history, driving records, employment information, and verification of the Applicant's residences, personal identity, and income. It is understood and agreed upon in full by the Applicant and Staffordshire Property Management that this Application & Release is not a contract or proposed contract for the sale or lease of consumer goods or services, but solely a release agreement. The Applicant further authorizes Staffordshire Property Management and/or a consumer reporting agency to verify any and all information contained in this application and to inquire into the character, general reputation, personal characteristics and mode of living of the Applicant, and the Applicant hereby releases all concerns from any liability in connection with the information the Applicant gives. The Applicant also been advised of the right, under the Federal Fair Credit Reporting Act, Section 606(B) to make a written request of Staffordshire Property Management and the consumer reporting agency, within a reasonable time, for a complete and accurate disclosure of the nature and scope of the investigation. The Applicant consents, whether approved or not approved, to hold and maintain the terms, conditions, and communications related to Staffordshire Property Management, this application, and application process in strict confidence, and specifically agrees not to disparage Staffordshire Property Management, and any of its employees, managers, or agents in any way, and also agrees not to communicate, publish, characterize, publicize or disseminate, in any manner, any terms, conditions, opinions and communications related to Staffordshire Property Management, this application, or the application process. Staffordshire Property Management also agrees to hold the details of any investigative report and background history examination in strict confidence and agrees to only share such details with the owner(s) of the property for which the Applicant has applied. Any breach of such confidentiality will support a cause of action and will entitle Staffordshire Property Management to recover any and all damages from such a breach. The Applicant also consents to, and authorizes the use of, any subsequent consumer report(s) under this authorization in connection with the collection of any debt associated with the rental of the residence for which this application was made. Finally, the Applicant acknowledges receipt of the summary of consumer rights required by Section 609 of the Fair Credit Reporting Act entitled "A Summary of Your Rights under the Fair Credit Reporting Act."

I have fully read and understand all of the provisions of this Application & Release and acknowledge receipt of a completed copy of same.

_____ PRINT APPLICANT NAME	_____ DATE	_____ APPLICANT SIGNATURE (SEAL)
_____ APPROVE/REJECT	_____ DATE	_____ STAFFORDSHIRE PROPERTY MANAGEMENT (SEAL)

Decision and Order

DECISION

The Federal Trade Commission (“Commission”) initiated an investigation of certain acts and practices of the Respondents named in the caption. The Commission’s Bureau of Consumer Protection (“BCP”) prepared and furnished to Respondents a draft Complaint. BCP proposed to present the draft Complaint to the Commission for its consideration. If issued by the Commission, the draft Complaint would charge the Respondents with violations of the Consumer Review Fairness Act of 2016.

Respondents and BCP thereafter executed an Agreement Containing Consent Order (“Consent Agreement”). The Consent Agreement includes: 1) statements by Respondents that they neither admit nor deny any of the allegations in the Complaint, except as specifically stated in this Decision and Order, and that only for purposes of this action, they admit the facts necessary to establish jurisdiction; and 2) waivers and other provisions as required by the Commission’s Rules.

The Commission considered the matter and determined that it had reason to believe that Respondents have violated the Consumer Review Fairness Act, and that a Complaint should issue stating its charges in that respect. The Commission accepted the executed Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments. Now, in further conformity with the procedure prescribed in Rule 2.34, the Commission issues its Complaint, makes the following Findings, and issues the following Order:

FINDINGS

1. The Respondents are:
 - a. Staffordshire Property Management, LLC, a Maryland limited liability company with its principal office or place of business at 108 East Preston Street, Apt. 1, Baltimore, Maryland 21202.
 - b. Aaron Fischer, owner and manager of Staffordshire Property Management, LLC. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of Staffordshire Property Management, LLC. His principal office or place of business is the same as that of Staffordshire Property Management, LLC.
2. The Commission has jurisdiction over the subject matter of this proceeding and over the Respondents, and the proceeding is in the public interest.

Decision and Order

ORDER**Definitions**

For purposes of this Order, the following definitions apply:

- A. “Covered Communication” means a written, oral, or Pictorial review, performance assessment, or other similar analysis of goods or services, including conduct related to the goods or services.
- B. “Review-Limiting Contract Term” means a standardized contract term that:
 - 1. prohibits or restricts the ability of a person who is a party to the contract to engage in a Covered Communication;
 - 2. imposes a penalty or fee against a person who is a party to the contract for engaging in a Covered Communication; or
 - 3. transfers, or requires a person who is a party to the contract to transfer, to any other person any intellectual property rights in a Covered Communication, with the exception of a non-exclusive license to lawfully use a Covered Communication about a Respondent’s goods or services.
- C. “Pictorial” includes pictures, photographs, video, illustrations, and symbols.
- D. “Respondents” means Staffordshire Property Management, LLC and Aaron Fischer, individually or collectively.
 - 1. “Corporate Respondent” means Staffordshire Property Management, LLC, a limited liability company, and its successors and assigns.
 - 2. “Individual Respondent” means Aaron Fischer.

Provisions**I. Prohibited Use of Review-Limiting Contract Terms**

IT IS ORDERED that Respondents, and Respondents’ members, managers, officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the sale or leasing of any good or service, must not:

- A. offer to any prospective customer a contract, or offer to any customer a renewal contract, that includes a Review-Limiting Contract Term;

Decision and Order

- B. require that a customer accept a Review-Limiting Contract Term as a condition of any Respondent's fulfillment of its obligations under a customer contract that a Respondent entered into before the effective date of this Order; or
- C. attempt to enforce or assert the validity of any Review-Limiting Contract Term in any customer contract that a Respondent entered into before the effective date of this Order.

Nothing in this Provision shall require a Respondent to publish or host the content of any person, affect any other legal duty of a party to a contract, or affect any cause of action arising from the breach of such duty.

II. Notice to Consumers

IT IS FURTHER ORDERED that Respondents must notify consumers as follows:

- A. Within 30 days after the effective date of this Order, each Respondent must notify all customers who entered into a contract with any Respondent that included any term concerning a Covered Communication, such as Respondents' "Authorization, Agreement & Release Consent Form," used on or after March 14, 2017 through the effective date of this Order, by mailing or emailing each a notice as shown in Attachment A:
 - 1. The heading of the notice and the subject line for any email must read "Your Right to Post Honest Reviews," and the email must be sent to each recipient individually from an address with the staffordshirerealty.com domain.
 - 2. The Corporate Respondent's name and return address, for any mailing, must appear on the front of the envelope, the customer's name and address must be printed on the front of the envelope or be visible through a window in the envelope, and the words "Your Right to Post Honest Reviews" must be printed in easily noticed text near the customer's name and address.
 - 3. The notice must not include any other materials or message about a Respondent, or otherwise concern its goods or services.
- B. Respondents must notify consumers online:
 - 1. Respondents must post a web page notice as shown in Attachment A, with the heading "Your Right to Post Honest Reviews," on the staffordshirerealty.com "Blog" page, in the same format as Respondents' other "Blog" posts.

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2. For as long as the web page notice is posted, Respondents must maintain a link to the web page notice and embed the link in the words “Your Right to Post Honest Reviews” on the staffordshirerealty.com home page in a button substantially similar to, and directly below, the “Staffordshire Blog” button, and on the home page of any other website under Individual Respondent’s control used primarily to promote or operate a property management business.
3. The web page notice and any link to it must, by its size, contrast, location, and other characteristics, stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.
4. The web page notice must be posted not later than 3 days after the effective date of this Order and for at least 2 years after the effective date of this Order.

III. Acknowledgments of the Order

IT IS FURTHER ORDERED that Respondents obtain acknowledgments of receipt of this Order:

- A. Each Respondent, within 10 days after the effective date of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.
- B. For 5 years after the issuance date of this Order, Individual Respondent for any business that he, individually or collectively with Corporate Respondent, owns a majority of or controls directly or indirectly, and Corporate Respondent, must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees having managerial responsibilities for drafting, approving, or enforcing customer contracts, or for responding to Covered Communications and all agents and representatives who participate in drafting, approving, or enforcing customer contracts, or responding to Covered Communications; and (3) any business entity resulting from any change in structure as set forth in the Provision titled Compliance Reports and Notices. Delivery must occur within 10 days after the effective date of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.
- C. From each individual or entity to which a Respondent delivered a copy of this Order, Respondent must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

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IV. Compliance Reports and Notices

IT IS FURTHER ORDERED that Respondents make timely submissions to the Commission:

- A. One year after the issuance date of this Order, each Respondent must submit a compliance report, sworn under penalty of perjury, in which:
 - 1. Each Respondent must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission may use to communicate with Respondent; (b) identify all of that Respondent's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the goods and services offered and the means of advertising, marketing, and sales, any conduct toward consumers who have engaged in Covered Communications, and the involvement of any other Respondent (which Individual Respondent must describe if he knows or should know due to his own involvement); (d) describe in detail whether and how Respondent is in compliance with each Provision of this Order, including a discussion of all of the changes Respondent made to comply with this Order; and (e) provide a copy of each Acknowledgment of this Order obtained pursuant to this Order, unless previously submitted to the Commission.
 - 2. Additionally, Individual Respondent must: (a) identify all his telephone numbers and all his physical, postal, email and Internet addresses, including all residences; (b) identify all his business activities, including any business for which he performs services whether as an employee or otherwise and any entity in which he has any ownership interest; and (c) describe in detail his involvement in each such business activity, including title, role, responsibilities, participation, authority, control, and any ownership.
- B. For 5 years after the issuance date of this Order, each Respondent must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:
 - 1. Each Respondent must submit notice of any change in: (a) any designated point of contact; or (b) the structure of any Corporate Respondent or any entity that Respondent has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.

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2. Additionally, Individual Respondent must submit notice of any change in:
(a) name, including alias or fictitious name, or residence address; or (b) title or role in any business activity, including (i) any business for which he performs services whether as an employee or otherwise and (ii) any entity in which he has any ownership interest and over which he has direct or indirect control. For each such business activity, also identify its name, physical address, and any Internet address.
- C. Each Respondent must submit notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such Respondent within 14 days of its filing.
- D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____” and supplying the date, signatory’s full name, title (if applicable), and signature.
- E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: *In re Staffordshire Property Management, LLC*, C-4682.

V. Recordkeeping

IT IS FURTHER ORDERED that Respondents must create certain records for 5 years after the issuance date of this Order, and retain each such records for 5 years, unless otherwise specified below. Specifically, Corporate Respondent and Individual Respondent, for any business that such Respondent, individually or collectively with any other Respondents, owns a majority of or controls directly or indirectly, must create and retain the following records:

- A. Personnel records showing, for each person providing services in relation to any aspect of this Order, whether as an employee or otherwise, that person’s: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;
- B. A copy of: each unique rental application or other contract relating to a Covered Communication; each unique contract used in connection with the sale or leasing of Respondent’s goods or services, including processing applications to rent property; all communications with consumers threatening any legal action relating to any Covered Communication; and all parties’ court filings and Respondents’

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discovery responses in any legal action relating to any Covered Communication; and

- C. All records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission.

VI. Compliance Monitoring

IT IS FURTHER ORDERED that, for the purpose of monitoring Respondents' compliance with this Order:

- A. Within 10 days of receipt of a written request from a representative of the Commission, each Respondent must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury, and produce records for inspection and copying.
- B. For matters concerning this Order, representatives of the Commission are authorized to communicate directly with each Respondent. Respondents must permit representatives of the Commission to interview anyone affiliated with any Respondent who has agreed to such an interview. The interviewee may have counsel present.
- C. The Commission may use all other lawful means, including posing through its representatives as consumers, suppliers, or other individuals or entities, to Respondents or any individual or entity affiliated with Respondents, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

VII. Order Effective Dates

IT IS FURTHER ORDERED that this Order is final and effective upon the date of its publication on the Commission's website (ftc.gov) as a final order. This Order will terminate on July 25, 2039, or 20 years from the most recent date that the United States or the Commission files a complaint (with or without an accompanying settlement) in federal court alleging any violation of this Order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. Any Provision in this Order that terminates in less than 20 years;
- B. This Order's application to any Respondent that is not named as a defendant in such complaint; and
- C. This Order if such complaint is filed after this Order has terminated pursuant to this Provision.

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Provided, further, that if such complaint is dismissed or a federal court rules that the Respondent did not violate any provision of this Order, and the dismissal or ruling is either not appealed or upheld on appeal, then this Order will terminate according to this Provision as though the complaint had never been filed, except that this Order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

ATTACHMENT A TO THE ORDER**Letter, Email, and Web Page Notice Template:**

The notice must be in the following form, appearing on Respondents' letterhead, email, and staffordshirerealty.com "Blog" page with the underlined text completed as directed:

Your Right to Post Honest Reviews

Dear Tenants and Rental Applicants:

I am writing to tell you that the Federal Trade Commission (FTC), the nation's consumer protection agency, has alleged that we used contract provisions that violated the Consumer Review Fairness Act (CRFA). The CRFA protects your ability to share your honest opinions about a business's products, services, or conduct in any forum, including social media. According to the FTC, we used provisions in our rental applications that unlawfully restricted our customers [for letter and email notices add "(including you)"] from sharing truthful information and opinions about their experiences with us.

We are contacting our applicants and renters to tell you that these rental application agreement provisions are void and we cannot enforce them against you. You can publish your honest review even if you say something negative about us or our services.

If you have questions about the FTC's case, visit [add case page alias URL provided by FTC staff with embedded hyperlink].

Sincerely,

Aaron Fischer

Analysis to Aid Public Comment

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an agreement containing a consent order as to Staffordshire Property Management, LLC and Aaron Fischer (“respondents”).

The proposed consent order (“order”) has been placed on the public record for 30 days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the order and the comments received, and will decide whether it should withdraw the order or make it final.

This matter involves the respondents’ use of non-disparagement provisions in consumer form contracts in the course of processing the applications of prospective tenants to rent residential properties that respondents manage. The complaint alleges that the respondents violated Section 2(c) of the Consumer Review Fairness Act (“CRFA”) by offering to consumers form contracts that contained non-disparagement provisions made void by Section 2(b) of the CRFA. The CRFA defines a form contract as a contract with standardized terms, used in the course of selling or leasing goods or services, and imposed on an individual without a meaningful opportunity for such individual to negotiate the standardized terms.

The order includes injunctive relief that prohibits these alleged violations and fences in similar and related conduct involving the use of contract terms that prohibit, restrict, penalize, or transfer rights in consumer reviews or evaluation of the respondents, their goods, or their services.

Part I prohibits, in the sale or leasing of any good or service, the respondents from: offering to any prospective customer a contract, or offering to any customer a renewal contract, that includes a review-limiting term; requiring that a customer accept such a term as a condition of the respondents’ fulfillment of their obligations under contracts entered into before the effective date of the order; or attempting to enforce or assert the validity of such a term in customer contracts entered into before the effective date of the order. Part I would not require that the respondents publish or host the content of any person, affect any other legal duty of a party to a contract, or affect any cause of action arising from the breach of such duty.

Part II requires the respondents to notify customers via letters or emails, and via their web site, that the non-disparagement provisions in their form contracts are void and cannot be enforced, and that customers who entered into contracts with those provisions can publish their honest reviews about the respondents, even if their comments are negative.

Part III requires the respondents to submit signed acknowledgments that relevant personnel received the order.

Part IV requires the respondents to file compliance reports with the Commission, and to notify the Commission of bankruptcy filings or changes in company structure that might affect compliance obligations.

Analysis to Aid Public Comment

Part V contains recordkeeping requirements for personnel records, consumer contracts, communications with consumers threatening any legal action relating to any review; and court filings and the company's discovery responses in legal actions over consumer reviews, as well as all records necessary to demonstrate compliance or non-compliance with the order.

Part VI contains other requirements related to the Commission's monitoring of the respondent's order compliance.

Part VII provides the effective dates of the order, including that, with exceptions, the order will terminate in 20 years.

The purpose of this analysis is to facilitate public comment on the order, and it is not intended to constitute an official interpretation of the complaint or order, or to modify the order's terms in any way.

Complaint

IN THE MATTER OF

**SHORE TO PLEASE VACATIONS LLC,
AND
ROBERT AARON STEPHENS**

CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF SECTION 5 OF THE FEDERAL
TRADE COMMISSION ACT, AND SECTION 2 OF THE CONSUMER REVIEW FAIRNESS ACT

*Docket No. C-4683; File No. 182 3088
Complaint, July 29, 2019 – Decision, July 29, 2019*

This consent order addresses Shore to Please Vacations LLC and Robert A. Stephens's use of non-disparagement provisions in consumer form contracts in the course of renting vacation properties. The complaint alleges that the respondents violated Section 2(c) of the Consumer Review Fairness Act ("CRFA") by offering to consumers form contracts that contained non-disparagement provisions made void by Section 2(b) of the CRFA. The consent order prohibits, in the sale or leasing of any good or service, the respondents from: offering to any prospective customer a contract, or offering to any customer a renewal contract, that includes a review-limiting term; requiring that a customer accept such a term as a condition of the respondents' fulfillment of their obligations under contracts entered into before the effective date of the order; or attempting to enforce or assert the validity of such a term in customer contracts entered into before the effective date of the order.

Participants

For the *Commission*: *Carl H. Settlemeyer*.

For the *Respondents*: *Daniel W. Uhlfelder, P.A.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Shore to Please Vacations LLC and Robert Aaron Stephens, individually and as owner and manager of Shore to Please Vacations LLC (collectively, "Respondents"), have violated the Consumer Review Fairness Act of 2016, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Shore to Please Vacations LLC ("STP") is a Nevada limited liability company, registered to do business in Florida, with its principal office or place of business at 8033 West Sunset Boulevard, #1079, West Hollywood, California 90046. STP has advertised and rented to the public, via VRBO.com (a/k/a "Vacation Rental by Owner"), Rosemary Beach, Florida vacation properties owned by Respondent Robert Aaron Stephens.

2. Respondent Robert Aaron Stephens is the owner and manager of STP. Individually or in concert with others, he controlled or participated in the acts and practices of STP, including the acts and practices alleged in this complaint. His principal office or place of business is the same as that of STP.