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**DISTRICT COURT OF THE STATE OF UTAH
THIRD JUDICIAL DISTRICT
SALT LAKE COUNTY**

<p>STATE OF UTAH, Plaintiffs, vs. DAVITA INC. and TOTAL RENAL CARE, INC., Defendants.</p>	<p>SETTLEMENT AGREEMENT AND ORDER</p> <p>CASE NO. 210905956</p> <p>Judge Mark Kouris</p>
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I. SETTLEMENT AGREEMENT

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|----|-------------------------|---|
| 1. | Plaintiff: | State of Utah |
| 2. | Defendants: | DaVita Inc. and Total Renal Care, Inc. |
| 3. | Monetary Payment: | \$80,000 |
| 4. | Attorney for Plaintiff: | Christy A. Matelis
David Sonnenreich
Utah Attorney General's Office |
| 5. | Attorney for Defendant: | Stephen Weissman
Michael Perry
Gibson Dunn & Crutcher LLP |

II. INTRODUCTION

6. Plaintiff State of Utah, by and through its Attorney General, has commenced an action under Section 7 of the Clayton Act, 15 U.S.C. Section 18, and the Utah Antitrust Act, Utah Code Section 76-10-3104, against Defendant DaVita Inc. and its wholly owned subsidiary, Total Renal Care, Inc.

7. The Office of the Attorney General of the State of Utah (“UAGO”) initiated an investigation into Defendant’s (1) proposed acquisition of 18 University of Utah kidney dialysis clinics, (2) allegedly overbroad and restrictive non-compete agreements with the University of Utah proposed in connection with the acquisition, and (3) allegedly overbroad and restrictive non-compete agreements with University-employed physicians proposed in connection with the acquisition. The University of Utah is currently the largest kidney dialysis provider in the State of Utah and Defendant is the third largest kidney dialysis provider in the State of Utah. If the proposed acquisition succeeds, Defendant will become the largest dialysis provider in the State.

8. Plaintiff and Defendant have engaged in arms-length negotiations and have agreed on a basis for settlement of all of Plaintiff’s claims against Defendant and to the entry of this Settlement Agreement without trial or adjudication of any issue of fact or law.

9. Defendant does not admit the allegations of the Complaint or any liability or violation of law, and believes it has valid defenses to Plaintiff’s claims and any potential claims that have been or could be asserted by Plaintiff against Defendant. Nevertheless, Defendant agrees to entry of this Settlement Agreement to: (a) avoid the expense, inconvenience, and distraction of burdensome and protracted litigation; (b) obtain the releases, orders, and final judgment contemplated by this Settlement Agreement; and (c) put to rest and terminate with

finality all claims that Plaintiff has asserted against Defendant that relates in any way to or arises out of the allegations in this Complaint, as more particularly set forth below.

10. Defendant recognizes and states that it enters into this Settlement Agreement voluntarily and that other than the promises contained here, no promises have been made by the UAGO or any member, officer, agent or representative thereof to induce Defendant to enter into this Settlement Agreement.

11. All parties agree that this Settlement Agreement is entered voluntarily and represents the entire agreement of the parties. All parties agree and represent that any persons signing this Settlement Agreement have been authorized to execute this Settlement Agreement.

12. Plaintiff and Defendant waive any right they may have to appeal from this Settlement Agreement and from the Order adopting it, provided that no substantive changes are made to the Settlement Agreement after it has been presented to the Court. However, the UAGO may seek to modify this Settlement Agreement and Order, or to vacate it and proceed to litigate an enforcement action, if the UAGO can establish that Defendant intentionally or negligently misrepresented any material facts to the FTC or the UAGO in the course of their investigations.

NOW, THEREFORE, there being no just reason for delay for resolving the claims alleged in Plaintiff's Complaint against Defendant, and before the taking of any testimony, and without trial or adjudication of any issue of any fact or law, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

III. JURISDICTION AND SCOPE

13. The Court has jurisdiction over the parties and the subject matter of the Complaint, as well as the implementation, enforcement, and performance of the terms included in this Settlement Agreement.

14. The UAGO has the authority to bring this Action under Section 16 of the Clayton Act, 15 U.S.C. Section 18, and the Utah Antitrust Act, Utah Code Section 76-10-3108. Venue is proper in the Third District Court because the Defendant conducts business, and the contested purchase agreement takes place, within the territorial jurisdiction of the Third District Court.

IV. DEFINITIONS

15. THE COURT ORDERS that the following definitions shall be used in interpreting the terms of this Settlement Agreement:

16. “Defendant” or “DaVita” shall refer to DaVita Inc., with its principal place of business located at 2000 16th St., Denver, Colorado, 80202, and its wholly owned subsidiary Total Renal Care, Inc., with its principal place of business located at 601 Hawaii Street, Segundo, California 90245.

17. “Effective Date” shall mean the date the Court enters this Settlement Agreement.

18. “State” shall mean the Plaintiff, State of Utah, by and through the Attorney General.

19. “Complaint” shall mean the Complaint filed against Defendant in State of Utah v. DaVita Inc.

20. “SRS” or “Sanderling” means (1) Sanderling Renal Services-USA LLC, a limited liability company organized, existing and doing business under the laws of the State of Delaware with its executive offices and principal place of business located at 511 Union Street, No. 1800,

Nashville, Tennessee 37219, (2) SRS-Utah, LLC, a limited liability company organized, existing and doing business under the laws of the State of Delaware with its executive offices and principal place of business located at 511 Union Street, No. 1800, Nashville, Tennessee 37219, and (3) any Person controlled by or under common control of Sanderling Renal Services-USA LLC or SRS-Utah, LLC.

21. Any capitalized terms not defined in this Section IV shall have the definitions set forth in the proposed Decision and Order issued by the Federal Trade Commission.

V. DIVESTITURE CLINICS

22. “Divestiture Clinic” means any one, or all, of the following:

- a. University of Utah’s Provo, UT Clinic, located at 1675 N Freedom Boulevard, Suite 15, Provo, Utah, 84604;
- b. University of Utah’s Payson, UT Clinic, located at 15 S 1000 E, Suite 50, Payson, Utah, 84651; and
- c. University of Utah’s American Fork, UT Clinic, located at 1159 E 200 N, Suite 150, American Fork, Utah, 84003.
- d. DaVita’s Weber Valley Dialysis Center, located at 1920 West 250 North, Ogden, Utah 84404.

VI. DIVESTITURE TERMS

23. The following terms shall apply to each of the Divestiture Clinics:

- a. DaVita shall assist SRS to conduct a due diligence investigation of the clinic assets that Sanderling seeks to purchase, including by providing sufficient and timely access to all information customarily provided as part of a due diligence process, and affording SRS and

its representatives (including prospective lenders and their representatives) full and free access, during regular business hours, to the personnel, assets, Contracts, and Business Information, with such rights of access to be exercised in a manner that does not unreasonably interfere with the operations of DaVita.

b. DaVita will grant to SRS, absolutely and in good faith, in accordance with the Divestiture Agreements, a royalty-free, fully paid-up, perpetual, irrevocable, transferable, and sub-licensable license and such tangible embodiments of the licensed rights (including physical and electronic copies) as may be necessary or appropriate to enable the licensee to use the rights, for the use, without any limitation, of all Policies and Procedures related to the clinic.

24. DaVita will acquire for SRS all of the following:

- a. All approvals for the assignment of the rights, title, and interest to lease the clinic;
- b. All approvals for the assignment of the Clinic Physician Contracts related to the clinic; and
- c. All Governmental Permits.

25. DaVita shall:

a. Place no restrictions on the use by SRS of any of the Clinic Assets to be sold to SRS, or interfere with or otherwise attempt to interfere with any of SRS's use of any of the Clinic Assets to be bought, including seeking or requesting the imposition of governmental restrictions on SRS's business operations relating to the purchase of the clinic.

b. Assign to SRS all of the Clinic Physician Contracts currently in place at the clinic.

c. With respect to all contracts included in the sale of the Clinic Assets other than Clinic Physician Contracts, at SRS's option and on the sale date:

- i. if such contract can be assigned without third party approval, assign DaVita's rights under the contract to SRS; and
 - ii. if such contract can be assigned to SRS only with third party approval, assist and cooperate with SRS in obtaining such third party approval and in assigning the contract to SRS, or in obtaining a new contract.
- d. For two years following the date the clinic is sold to SRS, DaVita shall not solicit the business of any patient who received any goods or services from the clinic between September 1, 2020, and the date the clinic was sold. Provided, however, that DaVita may (i) make general advertisements for the business of such patients including in newspapers, trade publications, websites, or other media not targeted specifically at such patients, and (ii) provide advertising and promotions directly to any patient that initiates discussions with, or makes a request to, any employee of DaVita.

VII. NON-COMPETE AGREEMENTS

26. Until 6 months after the Divestiture Date, DaVita shall cooperate with and assist SRS of the Divestiture Clinic Assets to evaluate independently and offer employment to the Divestiture Clinic Employees.

27. Until 90 days after the Divestiture Date, DaVita shall:

a. No later than 10 days after a request from SRS, provide to SRS a list of all Divestiture Clinic Employees and provide Employee Information for each;

b. No later than 10 days after a request from SRS, provide SRS an opportunity to meet outside the presence or hearing of any employee or agent of DaVita with any of the

Divestiture Clinic Employees, and to make offers of employment to any of the Divestiture Clinic Employees;

c. Remove any impediments within the control of DaVita that may deter Divestiture Clinic Employees from accepting employment with SRS, including removal of any non-compete or confidentiality provisions of employment or other contracts with DaVita that may affect the ability or incentive of those individuals to be employed by SRS, and shall not make any counteroffer to a Divestiture Clinic Employee who receives an offer of employment from SRS; provided, however, that nothing in this settlement agreement shall be construed to require DaVita to terminate the employment of any employee or prevent DaVita from continuing the employment of any employee;

d. Continue to provide Divestiture Clinic Employees compensation and benefits, including regularly scheduled raises and bonuses and the vesting of benefits while they are employed by DaVita;

e. Provide reasonable financial incentives for Divestiture Clinic Employees to continue in their positions, and as may be necessary, to facilitate the employment of such Divestiture Clinic Employees by SRS; and

f. Not interfere, directly or indirectly, with the hiring or employing by SRS of any Divestiture Clinic Employee, not offer any incentive to such employees to decline employment with SRS, and not otherwise interfere with the recruitment of any Divestiture Clinic Employee by SRS.

28. DaVita shall not, for a period of 180 days following the Divestiture Date, directly or indirectly, solicit or otherwise attempt to induce any of the Divestiture Clinic Employees who

have accepted offers of employment with SRS to terminate his or her employment with SRS; provided, however, DaVita may:

- a. Hire an employee whose employment has been terminated by SRS;
- b. Advertise for employees in newspapers, trade publications, or other media, or engage recruiters to conduct general employee search activities, in either case not targeted specifically at one or more Divestiture Clinic Employees; or
- c. Hire an employee who has applied for employment with DaVita, as long as such application was not solicited or induced in violation of this Section.

29. With respect to each Physician who has provided services to a Divestiture Clinic pursuant to any of the Clinic Physician Contracts in effect at any time during the 4 months preceding the Divestiture Date of the Divestiture Clinic (“Contract Physician”), DaVita shall not, for a period of 180 days, offer any incentive to the Contract Physician, the Contract Physician’s practice group, or other members of the Contract Physician’s practice group to decline to provide services to a Divestiture Clinic acquired by SRS, and shall eliminate any confidentiality restrictions that would prevent the Contract Physician, the Contract Physician’s practice group, or other members of the Contract Physician’s practice group from using or transferring to SRS any information related to the operation of a Divestiture Clinic.

30. DaVita:

- a. Shall not enforce, directly or indirectly, any non-compete provision or agreement, and not enter into any new non-compete provision or agreement, with any Physician employed by the University of Utah, that limit the Physician’s right to be a medical director at any Clinic owned or operated by a Person other than DaVita within the State of Utah; provided, however,

DaVita may require, directly or indirectly, any University of Utah nephrologist serving under a DaVita Clinic Physician Contract at a dialysis clinic operated by DaVita to abide by a non-compete provision or agreement effective solely to restrict such nephrologist from simultaneously being a medical director at a clinic not operated by DaVita; and

i. Shall give each Physician affected by Paragraph 30(a) written notice of Paragraph 30(a). Such notice shall include the contents of Paragraph 30(a) and a description of its terms, including notice that DaVita cannot enforce any non-compete that prevents the Physician from serving as a medical director, at any time and without penalty, at a Clinic owned or operated by a Person other than the DaVita except as provided above, in Paragraph 30(a).

31. DaVita shall not enter into any agreement with SRS that restricts SRS from soliciting DaVita's employees for employment at SRS.

VIII. COMPLIANCE REPORTS

32. Defendant waives any objection to reports to the FTC Commission by the Monitor as required by Paragraph VIII of the FTC Order and Paragraph VI of the Order to Maintain Assets, also being provided to the UAGO at the same time they are provided to the Commission, and will affirmatively instruct the Monitor to automatically provide all such reports, and upon request of the UAGO any related correspondence and supporting documents, to the UAGO at the same time that the reports are provided to the FTC Commission. Defendant further waives any objection to the Monitor consulting with or disclosing any relevant information to the UAGO so long as the UAGO agrees to maintain the confidentiality of such information to the fullest extent possible. In the event of a disagreement or dispute between

Defendant and the Monitor that cannot be resolved, Defendant expressly permits the Monitor to seek the assistance of the UAGO to resolve the issue.

33. Defendant agrees to include Monitor reports for DaVita's Weber Valley Dialysis Center, located at 1920 West 250 North, Ogden, Utah 84404 in the reports sent to the UAGO. The Monitor's reports for this clinic are subject to the same conditions same those in Paragraph 32.

34. Monitor Reports contain confidential information that may also include trade secrets as defined in Utah Code Sections 13-24-2 and 63G-2-305. Such reports shall be treated by the UAGO as "Protected Records" pursuant to the Utah Government Records Management Act ("GRAMA") Utah Code Section 63G-2-305(10) and any other provisions of GRAMA that the UAGO deems applicable to the specific records requested.

IX. ACCESS TO CLINICS

35. DaVita will continue to engage in good faith to negotiate contracts with an insurer if the insurer seeks to include fewer than all of DaVita's Utah clinics in its network, including only one or more of the following clinics: Castleview/Price, Payson.

X. CORPORATE STRUCTURE CHANGE

36. Defendant shall notify the UAGO at least thirty (30) days prior to any proposed change in the corporate Defendant, such as bankruptcy, liquidation, dissolution, assignment, merger or sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of this Settlement Agreement.

XI. MONETARY PAYMENT

37. Within ten (10) business days of the entry of this Settlement Agreement, Defendant shall pay the sum of \$80,000 to the UAGO for the payment of investigative costs and attorneys' fees.

XII. STATE-FEDERAL CONSULTATION

38. The UAGO will consult with the Commission on all decisions relating to the divestiture of assets under this Settlement Agreement and the FTC Consent Order and will exercise best efforts to resolve any inconsistent enforcement positions among the agencies relating to such divestiture and the implementation of the FTC Consent Order.

XIII. RETENTION OF JURISDICTION

39. The Court shall retain jurisdiction over the parties for a period of ten years from the date of the Court's Order for the purpose of enabling any of the parties to this Settlement Agreement to apply to this Court for such further orders and directions as may be necessary or appropriate for the construction, implementation, enforcement, or modification of any of the provisions in this Settlement Agreement, and for the resolution of any violations of this Settlement Agreement. If such an application is made within the ten year period, the Court shall retain jurisdiction until said application is resolved, and may retain jurisdiction longer as part of the resolution. Subject to the foregoing, this Settlement Agreement will expire ten (10) years from the date of its entry.

XIV. PUBLIC INTEREST

40. This proceeding and prompt entry of this Settlement Agreement is in the public interest.

XV. NOTIFICATIONS

41. All notices issued under this Settlement Agreement shall be issued with a reference to the caption and number, to the following, or any subsequent designee:

To Plaintiff State of Utah, through the Office of the Attorney General:

Christy A. Matelis
Assistant Attorney General

Antitrust Section
Office of the Utah Attorney General
160 East 300 South, 5th Floor
Salt Lake City, UT 84114-0874
Tel: 801-366-0375
cmatelis@agutah.gov

To Defendant:

Stephen Weissman

Gibson, Dunn & Crutcher LLP
1050 Connecticut Avenue, N.W.
Washington, DC 20036-5306
Tel 202.955.8500
sweissman@gibsondunn.com

XVI. APPROVAL AND ORDER

42. The UAGO and Defendant hereby stipulate and agree to this settlement, and to the issuance of an order pursuant to it, effective October 29, 2021:

For the State of Utah, Sean D. Reyes, Utah Attorney General

/s/ Christy A. Matelis

Christy A. Matelis
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/s/David N. Sonnenreich

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For DaVita, Inc. and Total Renal Care, Inc.:

/s/Stephen Weissman

Stephen Weissman
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1050 Connecticut Avenue, N.W., Washington, DC 20036-5306
Tel +1 202.955.8678
SWeissman@gibsondunn.com

43. This Settlement Agreement is approved and hereby entered as an Order of the Court. This proceeding shall remain open for a period of ten years from today's date for purposes of enforcing this Settlement Agreement and Order, and in all other respects is hereby dismissed

with prejudice with all parties to bear their own attorneys' fees and costs, except as otherwise set forth in Section XI, infra.

*****END OF ORDER*****

Pursuant to Rule 10(e) of the Utah Rules of Civil Procedure, this Final Judgment and Settlement Agreement will be entered by the Court's signature at the top of the first page.