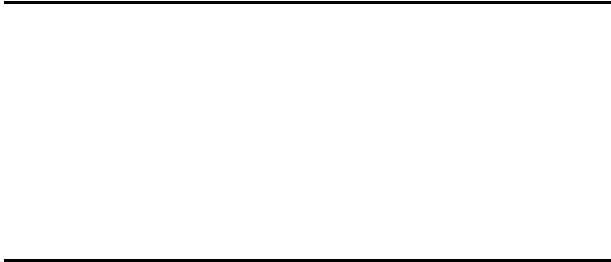


111 0170

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

16.686. E C



executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having modified the Decision and Order in certain respects, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent Fresenius Medical Care AG & Co. KGaA is a partnership limited by shares organized, existing and doing business under and by virtue of the laws of the Federal Republic of Germany, with its office and principal place of business located at Else-Kröner-Straße 1, 61352 Bad Homburg, Germany. Fresenius Medical Care AG & Co. KGaA is the parent of Fresenius Medical Care Holdings, Inc., a New York corporation, d/b/a Fresenius Medical Care North America (“FMCNA”) with its office and principal place of business located at 920 Winter St., Waltham, MA 02451-1457.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondent Fresenius, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. “Fresenius” means Fresenius Medical Care AG & Co. KGaA, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries (including, but not limited to Fresenius Medical Care AG & Co. KGaA, a partnership limited by shares organized under the laws of the Federal Republic of Germany, and Fresenius Medical Care Holdings, Inc.), divisions, groups, and affiliates controlled by Fresenius Medical Care AG & Co. KGaA (including, after the Effective Date, Liberty Dialysis Holdings, Inc.), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. After the Acquisition, “Fresenius” includes Liberty.
- B. “Liberty” means Liberty Dialysis Holdings, Inc., a corporation organized under the laws of Delaware, with its office and principal place of business located at 7650 SE 27th St., Suite 200, Mercer Island, WA 98040. Liberty Dialysis Holdings, Inc., includes Renal Advantage Inc. (“RAI”).
- C. “Commission” means the Federal Trade Commission.
- D. “Acquirer” and “Acquirers” means each Person that receives the prior approval of the Commission to acquire particular Clinic Assets pursuant to Paragraph II or Paragraph V of this Order.

- E. "Alaska Clinic Assets" means the Liberty Dialysis Clinic located at 901 East Dimond Blvd, Anchorage, Alaska, 99515, and all Assets Associated with that Clinic.
- F. "Alaska Clinic Assets Acquirer" means Alaska Investment Partners (HC) LLC, or any Person that receives the prior approval of the Commission to acquire the Alaska Clinic Assets pursuant to Paragraph II or Paragraph V of this Order.
- G. "Appendix A Clinics" means Clinics listed in Appendix A to this Order.
- H. "Appendix A Clinic Assets" means the Appendix A Clinics, the Appendix A-2 Joint Venture Equity Interests, and all Assets Associated with each of the Appendix A Clinics.
- I. "Appendix A-2 Joint Venture Equity Interests" means the joint venture equity interest in Clinics owned by Liberty and Respondent Fresenius described in Appendix A-2.0.0000 0.00000 D(L

5. books, records, files, correspondence, manuals, computer printouts, databases, and other documents Relating To the Operation Of The Clinic located on the premises of the Clinic or in the possession of the Regional Manager responsible for such Clinic (or copies thereof where Respondent Fresenius or Liberty has a legal obligation to maintain the original document), including, but not limited to:

a. documents containing information Relating To patients (to the extent transferable under applicable law), including, but not limited to, medical records,

b. financial records,

c. personnel files,

d. Physician lists and other records of the Clinic's dealings with Physicians,

e. maintenance records,

f. documents TD(79.2400 0.c00 1.00000 0.0000 0.0000 cm0.00 0.00 0.00 rgBTme5.2800 0.0000 T

9. assets that are used in, or necessary for, the Operation Of The Clinic.

PROVIDED, HOWEVER, that “Assets Associated” does not include Excluded Assets.

N. “Assets To Be Divested” means the Appendix A Clinic Assets, and any Appendix F Clinic Assets divested pursuant to Paragraph V.A. of the Order.

~~E. “CG 430000-0-0001-1-1109-ED-18-710-8094-9428-0900-08-7-ED-1-1-2859-8281-0000-0-000-0-87.699-0180”~~
E. “CG 430000-0-0001-1-1109-ED-18-710-8094-9428-0900-08-7-ED-1-1-2859-8281-0000-0-000-0-87.699-0180”
patients suffering from kidney disease.

P. “Clinic’s Physician Contracts” means all agreements to provide the services of any

EE. “Employee Of A Clinic To Be Divested” and “Employee Of The Clinic To Be Divested” mean any individual (including, but not limited to, a clinic director, manager, nurse, technician, clerk, dietician, or

13. e-mail addresses and telephone numbers of Respondent Fresenius's and Liberty's employees;
 14. Software;
 15. computer hardware used in the Operation Of The Clinic that is (a) not located at the Clinic, and (b) not otherwise to be divested pursuant to a Divestiture Agreement;
 16. all Supplier or provider numbers issued to Respondent Fresenius or Liberty by a Supplier or Payor with respect to any Clinic To Be Divested, except for Respondent Fresenius's or Liberty's Medicare and Medicaid provider numbers for each Clinic To Be Divested;
 17. rights under agreements with Payors and Suppliers that are not assignable even if Respondent Fresenius and Liberty approve such assignment;
 18. office equipment and furniture that (a) is not, in the Ordinary Course Of Business, physically located at the Clinic To Be Divested, (b) is shared with Clinics other than the Clinic To Be Divested, and (c) is not necessary to the Operation Of The Clinic To Be Divested.
 19. Licensed Intangible Property;
 20. Fresenius Medical Protocols and Liberty Medical Protocols, subject to the licensing provisions in this Order;
 21. Contracts to which Respondent Fresenius or Liberty or their affiliates (other than the Clinics To Be Divested) are a party and are not otherwise included in the Assets Associated with a Clinic To Be Divested; and
 22. strategic planning documents that
 - a. relate to the Operation Of The Clinic other than the Clinic To Be Divested, and
 - b. are not located on the premises of the Clinic To Be Divested.
- GG. "Florida Governmental Approvals for Divestiture" means any Governmental Approvals for Divestiture issued by the State of Florida.
- HH. "Florida Viera Clinic Asset" means the FMC Viera Clinic, located at 8041 Spyglass Road, Viera, FL 32940; and all Assets Associated with such Clinic.
- II. "Fresenius Employee Of A Clinic To Be Divested" and "Fresenius Employee Of The Clinic To Be Divested" means an Employee Of A Clinic To Be Divested who is employed by Respondent Fresenius or, before the acquisition by Respondent Fresenius, by Liberty.

- JJ. “Fresenius’s Medical Protocols” means medical protocols promulgated by Respondent Fresenius, whether in hard copy or embedded in software, that have been in effect at any time since July 1, 2010. *PROVIDED, HOWEVER*, “Fresenius’s Medical Protocols” does not mean medical protocols adopted or promulgated, at any time, by any Physician or by any Acquirer, even if such medical protocols are identical, in whole or in part, to medical protocols promulgated by Respondent Fresenius.
- KK. “Good Samaritan Hospital” means a hospital that is part of the Bons Secours Charity Health System located at 255 Lafayette Ave. (Route 59), Suffern, NY 10901.
- LL. “Good Samaritan Hospital Dialysis Clinic” means the Regional Kidney Center Clinic owned by Good Samaritan Hospital and located at 331 Route 17M, Harriman, NY 10926.
- MM. “Good Samaritan Management Agreement” means collectively:
1. the Administrative Services Agreement dated January 1, 2010, by and between Good Samaritan Hospital and Renal Research Institute, LLC, an affiliate of Respondent Fresenius, and
 2. any other agreements between Good Samaritan Hospital and Respondent Fresenius Relating To the management of the dialysis clinics at Good Samaritan Hospital located at 255 Lafayette Ave. (Route 59), Suffern, NY 10901, and 331 Route 17M, Harriman, NY 10926.
- NN. “Good Samaritan Management Termination Letter” means the February 1, 2012, letter from Renal Research Institute, LLC, an affiliate of Respondent Fresenius, and Good Samaritan Hospital giving sixty (60) days advance notice of termination of the Good Samaritan Management Agreement.
- OO. “Governmental Approvals” means any permissions or sanctions issued by any government or governmental organization, including, but not limited to, licenses, permits, accreditations, authorizations, registrations, certifications, certificates of occupancy, and certificates of need.
- PP. “Government Approvals For Continued Operation” means any Governmental Approvals, other than Government Approvals For Divestiture, that an Acquirer must have to continue to operate a Clinic To Be Divested.
- QQ. “Governmental Approvals For Divestiture” means any Governmental Approvals that an Acquirer must have to own, and to initially operate, a Clinic To Be Divested, including, but not limited to, state-issued licenses and state-issued certificates of need.
- RR. “Hawaii Governmental Approvals For Divestiture” means any Governmental Approvals For Divestiture issued by the State of Hawaii.

SS. “Hawaii Clinic Assets” means the following clinics and all Assets Associated with each of those Clinics:

1. FMC Aloha Clinic, 1520 Liliha Street, Honolulu, HI;
2. FMC Kapahulu Clinic, 750 Palani Avenue, Honolulu, HI;
3. FMC Pearlridge Clinic, 98-1005 Moanaloa Road, Suite 420, Aiea, HI;
4. FMC Honolulu Clinic, 226 N. Kuakini Street, Honolulu, HI;
5. FMC Kapolei Clinic, 555 Farrington Highway, Kapolei, HI;
6. FMC Ko'Olau Clinic, 47-388 Hui Iwa Street, Kaneohe, HI;
7. FMC Wahiawa Clinic, 850 Kilani Avenue, Wahiawa, HI;
8. FMC Windward Clinic, 45-480 Kaneohe Bay Drive #D09, Kaneohe, HI; and
9. FMC Waipahu Clinic (de novo), location to be determined, Waipahu, HI.

TT. “Intangible Property” means intangible property Relating To the Operation Of A Clinic To Be Divested including, but not limited to, intellectual property, software, computer programs, patents, know-how, goodwill, technology, trade secrets, technical information, marketing information, protocols, quality control information, trademarks, trade names, service marks, logos, and the modifications or improvements to such intangible property.

UU. “Liberty’s Medical Protocols” means medical protocols promulgated by Liberty, whether in hard copy or embedded in software, that have been in effect at any time since July 1, 2010. *PROVIDED, HOWEVER*, “Liberty’s Medical Protocols” does not mean medical protocols adopted or promulgated, at any time, by any Physician or by any Acquirer, even if such medical protocols are identical, in whole or in part, to medical protocols promulgated by Liberty.

VV. “Licensed Intangible Property” means intangible property licensed to Respondent Fresenius from a third party Relating To the Operation Of A Clinic To Be Divested including, but not limited to, intellectual property, software, computer programs, patents, know-how, goodwill, technology, trade secrets, technical information, marketing information, protocols, quality control information, trademarks, trade names, service marks, logos, and the modifications or improvements to such intangible property that are licensed to Respondent Fresenius. (“Licensed Intangible Property” does not mean modifications and improvements to intangible property that are not licensed to Respondent Fresenius.)

WW. “Memphis Clinics Joint Ventures” means the following limited liability companies that own Clinics in and around Memphis, TN: (1) NRA Memphis (South) Tennessee, LLC, owner of

the Liberty Pace Road Clinic at 4185 Pace Road, Memphis, TN 38116; and (2) NRA Memphis (Midtown) Tennessee LLC, owner of the Liberty Poplar Clinic at 1333 Poplar Avenue, Memphis, TN 38104.

- XX. “Memphis Clinics Joint Venture Interests” means all of Liberty’s equity and other interests held in each of the Memphis Clinics Joint Ventures. The “Memphis Clinics Joint Venture Interests” are also considered Secondary Divestiture Assets for purposes of Paragraphs I.H., I.I., and II of the Hold Separate Order.
- YY. “Memphis Clinics Joint Venture Interests Acquirer” means Satellite Healthcare, Inc., a not-for-profit corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 300 Santana Row, Suite 300, San Jose, California, 95128, or another person who receives the Commission’s p

7. contracting for the services of medical directors for the Clinic;
8. dealing with Payors that pay for products or services offered by the Clinic, including but not limited to, negotiating contracts with such Payors and submitting claims to such Payors; and

- KKK. “Regional Manager Of A Clinic To Be Divested” and “Regional Manager Of The Clinic To Be Divested” mean a Regional Manager with a geographic regional, or area supervisory, or management responsibility for a Clinic To Be Divested at any time since July 1, 2011.
- LLL. “Relating To” means pertaining in any way to, and is not limited to that which pertains exclusively to or primarily to.
- MMM. “Software” means executable computer code and the documentation for such computer code, but does not mean data processed by such computer code.
- NNN. “Supplier” means any Person that has sold to Respondent Fresenius, RAI, or Liberty any goods or services, other than Physician services, for use in a Clinic To Be Divested.
- OOO. “Time Of Divestiture” means the date upon which an Appendix A Clinic or an Appendix F Clinic is divested to an Acquirer pursuant to this Order.
- PPP. “University of California, San Diego Clinic” means the Clinic currently located at 200 W. Arbor Dr., San Diego, CA 92103.

II.

IT IS FURTHER ORDERED that:

- A. Respondent Fresenius shall:
1. within thirty-two (32) days after the Effective Date, divest to DSI, absolutely, and in good faith, pursuant to and in accordance with the DSI-Fresenius Divestiture Agreements all the Appendix A Clinics ~~and~~

3. within ninety (90) days after the Effective Date, divest to DSI, absolutely, and in good faith, pursuant to and in accordance with the DSI-Fresenius Divestiture Agreements, the Hawaii Clinic Assets, as an on-going business;
4. within one (1) year after the Effective Date, divest to DSI, absolutely, and in good faith, pursuant to and in accordance with the DSI-Fresenius Divestiture Agreements, the New York Clinic Assets, as an on-going business;
5. within sixty (60) days after the Effective Date, divest to DSI, absolutely, and in good faith, pursuant to and in accordance with the DSI-Fresenius Divestiture Agreements, the Florida Viera Clinic Assets, as an on-going business;
6. within fifteen (15) days after the Effective Date:
 - a. pursuant to and in accordance with the Good Samaritan Management Termination Letter, give notice to terminate the Good Samaritan Management Agreement, and pursuant to such letter and such management agreement, transfer management of the Good Samaritan Hospital Dialysis Clinic to Good Samaritan Hospital, who will either operate the Good Samaritan Hospital Dialysis Clinic itself or seek a new operator through a request for proposal process.
 - b. enter into a transition services agreement with Good Samaritan Hospital which shall be submitted to the Commission for approval within the fifteen-day time period, and shall include, but not be limited to:
 - (1) providing services consistent with, or similar to, the services currently provided to Good Samaritan under the Good Samaritan Management Agreement;
 - (2) a term not to extend beyond December 31, 2012;
 - (3) the unilateral option of Good Samaritan Hospital to terminate such agreement or phase out particular services or parts of such agreement upon notice as determined by Good Samaritan Hospital;
 - (4) assigning values or costs for particular services, such that if the services are phased out before the end of the transition services agreement, there will be no dispute on remaining costs;
 - (5) a firewall to protect Confidential Business Information Relating To the Good Samaritan Dialysis Clinic; and
 - (6) a prohibition on Respondent Fresenius from assigning such agreement.

The Good Samaritan Management Termination Letter and the Good Samaritan transition services agreement, when final and approved by the Commission, are incorporated by reference into this Order and made a part hereof as Non-Public Appendix J. If Respondent Fresenius fails to submit an executed transition services agreement to the Commission for approval within fifteen (15) days after the Effective Date, or if the Commission denies its approval of any agreement submitted for approval, then the Monitor, in consultation with Commission staff, shall be given the immediate and absolute authority to negotiate all terms of the transition services agreement with Good Samaritan, consistent with the terms of this Order, and subject to the Commission's prior approval. After the Effective Date and until the transition services agreement terminates, Respondent Fresenius shall not disclose Confidential Business Information Relating To the Good Samaritan Hospital Dialysis Clinic; and Respondent Fresenius shall assure that any employee who obtains or possesses Confidential Business Information Relating To the Good Samaritan Hospital Dialysis Clinic shall not disclose it to any employee who does not have primary responsibility for providing transition services to the Good Samaritan Hospital Dialysis Clinic.

Any failure by Respondent Fresenius to comply with the Good Samaritan Management Termination Letter and the final Good Samaritan transition services agreement shall constitute a failure to comply with the Order. The Good Samaritan Management Termination Letter and the final Good Samaritan transition services agreement shall not vary or contradict, or be construed to vary or contradict, the terms of this Order. Nothing in this Order shall reduce, or be construed to reduce, any rights or benefits of the Good Samaritan Hospital, or any obligations of Respondent Fresenius, under the Good Samaritan Management Termination Letter and the final Good Samaritan transition services agreement.

7. Within ten (10) days after the Effective Date, divest to the Alaska Clinic Acquirer, absolutely, and in good faith, pursuant to and in accordance with the Alaska Clinic Divestiture Agreement, the Alaska Clinic Assets as an on-going business, and grant to the Acquirer a royalty-free, worldwide non-exclusive license for the use, without any limitation, of the Liberty Medical Prot

- a. at the Time Of Divestiture of each Clinic To Be Divested, in obtaining all Government Approvals For Divestiture, and
 - b. all Government Approvals For Continued Operation, for each Clinic To Be Divested to such Acquirer.
3. at the Time Of Divestiture of each Clinic To Be Divested:
- a. assign to the Acquirer all rights, title, and interest to leases for the Real Property Of The Clinic divested to such Acquirer. *PROVIDED, HOWEVER*, that (1) if the Acquirer obtains all rights, title, and interest to a lease for Real Property Of A Clinic To Be Divested before the Assets To Be Divested are divested to such Acquirer pursuant to Paragraph II.A. of this Order, and (2) the Acquirer certifies its receipt of such lease and attaches it as part of the Divestiture Agreement, then Respondent Fresenius shall not be required to make the assignments for such Clinic To Be Divested as required by this Paragraph; and
 - b. assign to the Acquirer all of the Clinic's Physician Contracts for the Clinics divested to such Acquirer. *PROVIDED HOWEVER*, that (1) if the Acquirer enters into a Clinic's Physician Contract for a Clinic To Be Divested before the Assets To Be Divested are divested pursuant to Paragraph II.A. of this Order, and (2) the Acquirer certifies its receipt of such contract and attaches it as part of the Divestiture Agreement, then Respondent Fresenius shall not be require

000.0000 TD(ma)Tj18c.0 0

E. Respondent Fresenius shall:

(120) days after the divestiture required pursuant to Paragraph II.A.1. is completed for the employees who are Designated Fresenius Employees described in Paragraph I.Y.2.

PROVIDED, HOWEVER, that the terms of this Paragraph II.F. as it relates to the interviewing and hiring of Regional Managers shall not apply after the Acquirer has hired five (5) Regional Managers.

PROVIDED, FURTHER, HOWEVER, that if, at any time after

not include an individual who is part of the Alaska Clinic Assets Acquirer or the Dallas Clinics Joint Venture Interests Acquirer, and is employed or engaged as a medical director at a Respondent Fresenius Clinic, or otherwise engaged as a medical advisor for Respondent Fresenius.

H. With respect to each Physician who has provided services to a Clinic To Be Divested pursuant to any of the Clinic's Physician Contracts in effect at any time during the four (4) months preceding the Time Of Divestiture of the Clinic ("Contract Physician"):

1. Respondent Fresenius shall not 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 the Clinic To Be Divested, 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 the Acquirer of the Clinic To Be Divested any information Relating To the Operation Of The Clinic; and
2. For a period of three (3) years following the Time Of Divestiture of each Clinic To Be Divested, Respondent Fresenius shall not contract for the services of the Contract Physician, the Contract Physician's practice group, or other members of the Contract Physician's practice group for the provision of Contract Services to be performed in any of the areas listed in Appendix B of this Order that correspond to such Clinic. *PROVIDED, HOWEVER*, if the Contract Physician, or the Contract Physician's practice group, or other members of the Contract Physician's practice group were providing services to a Clinic pursuant to a contract with Respondent Fresenius or Liberty in effect as of July 1, 2011, then Respondent Fresenius may contract with such Contract Physicians, or the Contract Physician's practice group, or other members of the Contract Physician's practice group for services to be provided to that particular Clinic.

I. Respondent Fresenius shall:

1. not disclose Confidential Business Information relating exclusively to any of the Clinics To Be Divested to any Person other than the Acquirer of such Clinic;
2. after the Time Of Divestiture of such Clinic:
 - a. shall not use Confidential Business Information relating exclusively to any of the Clinics To Be Divested for any purpose other than complying with the terms of this Order or with any law; and
 - b. shall destroy all records of Confidential Business Information relating exclusively to any of the Clinics To Be Divested by the Time Of Divestiture of such Clinic.

- J. At the Time Of Divestiture of each Clinic To Be Divested, Respondent Fresenius shall provide the Acquirer of the Clinic with manuals, instructions, and specifications sufficient for the Acquirer to access and use any information,
1. divested to the Acquirer pursuant to this Order, or
 2. in the possession of the Acquirer, and previously used by Respondent Fresenius or Liberty in the Operation Of The Clinic.
- K. For two (2) years following the Time Of Divestiture of each Clinic To Be Divested, Respondent Fresenius shall not solicit the business of any patient who received any goods or services from such Clinic between July 1, 2011, and the date of such divestiture, *PROVIDED, HOWEVER*, Respondent Fresenius may (i) make general advertisements for the business of such patients including, but not limited to, in newspapers, trade publications, websites, or other media not targeted specifically at such pa

c. received a final court decision after all appeals.

O. The purpose of Paragraph II of this Order is to ensure the continuation of the Clinics To Be Divested as, or as part of, an ongoing viable enterprises engaged in the same business in which such assets were engaged at the time of the announcement of the acquisition by Respondent Fresenius of Liberty, to ensure that the Clinics To Be Divested are operated independently of, and in competition with, Respondent Fresenius, and to remedy the lessening of competitio

7g 0.0000 T0000 1.0000000000 0.00000 0.00000 1.00000 0.0000 0.0000 c

transaction. Respondent Fresenius shall provide the Notification to the Commission at least thirty (30) days prior to consummating the transaction (hereinafter referred to as the “first waiting period”). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Respondent Fresenius shall not consummate the transaction until thirty days after submitting such additional information or documentary material. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition.

PROVIDED, HOWEVER, that prior notification shall not be required by this paragraph for a transaction for which Notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.indirectly:

opposing, the selection of a proposed Monitor within ten (10) days after notice by the staff of the Commission to Respondent Fresenius of the identity of any proposed Monitor, Respondent Fresenius shall be deemed to have consented to the selection of the proposed Monitor. Not later than ten (10) days after appointment of a substitute Monitor, Respondent Fresenius shall execute an agreement that, subject to the prior approval of the Commission, confers on the Monitor all the rights and powers necessary to permit the Monitor to monitor Respondent Fresenius's compliance with the terms of this Order, the Order to Maintain Assets, and the Divestiture Agreements in a manner consistent with the purposes of this Order.

- D. Respondent Fresenius shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:
1. The Monitor shall have the power and authority to monitor Respondent Fresenius's compliance with the terms of this Order, the Order to Maintain Assets, and the Divestiture Agreements, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of this Order and in consultation with the Commission, including, but not limited to:
 - a. Assuring that Respondent Fresenius expeditiously complies with all of its obligations and perform all of its responsibilities as required by the this Order, the Order to Maintain Assets, and the Divestiture Agreements;
 - b. Monitoring any transition services agreements;
 - c. Assuring that Confidential Business Information is not received or used by Respondent Fresenius or the Acquirers, except as allowed in this Order and in the Order to Maintain Assets, in this matter.
 2. The Monitor shall act in a fiduciary capacity for the benefit of the Commission.
 3. The Monitor shall serve for sucint

the requirements of this Order, the Order to Maintain Assets, and the Divestiture Agreements.

- H. A Monitor appointed pursuant to this Order may be the same Person appointed as a trustee pursuant to Paragraph V of this Order and may be the same Person appointed as Monitor under the Order to Maintain Assets.

V.

IT IS FURTHER ORDERED that:

- A. If Respondent Fresenius has not divested, absolutely and in good faith and with the Commission's prior approval,
 - 1. all of the Appendix A Assets pursuant to Paragraph II of this Order, the Commission may appoint a trustee to (1) divest any of the Appendix A Assets that have not been divested pursuant to Paragraph II of this Order in a manner that satisfies the requirements of Paragraph II of this Order, which may include negotiations with landlords holding leases to the Assets to be Divested; or, in the event the Appendix A Clinics cannot be divested for whatever reason, (2) divest selected Appendix F Clinic Assets at the option of the Divestiture Trustee and the Commission.
 - 2. all of the Dallas Clinics Joint Venture Interests pursuant to Paragraph II of this Order, the Commission may appoint a trustee to (1) divest the Dallas Clinics Joint Venture Interests that have not been divested pursuant to Paragraph II of this Order in a manner that satisfies the requirements of Paragraph II of this Order; or, in the event the Dallas Clinics Joint Venture Interests cannot be divested for whatever reason, (2) divest the Appendix F-3 Clinics in the Dallas area at the option of the Divestiture Trustee and the Commission.
 - 3. all of the Alaska Clinic Assets pursuant to Paragraph II of this Order, the Commission may appoint a trustee to (1) divest the Alaska Clinic Assets that have not been divested pursuant to Paragraph II of this Order in a manner that satisfies the requirements of Paragraph II of this Order; or, in the event the Alaska Clinic Assets cannot be divested for whatever reason, (2) divest the Appendix F-4 Clinics in the Alaska area at the option of the Divestiture Trustee and the Commission.
 - 4. all of the Memphis Clinics Joint Venture Interests pursuant to Paragraph II of this Order, the Commission may appoint a trustee to (1) divest the Memphis Clinics Joint Venture Interests that have not been divested pursuant to Paragraph II of this Order in a manner that satisfies the requirements of Paragraph II of this Order; or, in the event the Memphis Clinics Joint Venture Interests cannot be divested for whatever reason, (2) divest the Appendix F-5 Clinics in the Memphis area at the option of the Divestiture Trustee and the Commission.

In the event that the Commission or the Attorney General brings an action pursuant to Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondent Fresenius shall consent to the appointment of a trustee in such action to divest the relevant assets in accordance with the terms of this Order. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondent Fresenius to comply with this Order.

Bluebonnet Capital Management, L.P. (the "Trust")

financial or other information as the trustee may request and shall cooperate with the trustee. Respondent Fresenius shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondent Fresenius shall extend the time for divestiture under this Paragraph V in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

4. The trustee shall use commercially reasonable best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent Fresenius's absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to an Acquirer or Acquirers that receives the prior approval of the Commission, as required by this Order; *PROVIDED, HOWEVER*, if the trustee receives bona fide offers for particular assets from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity for such assets, the trustee shall divest the assets to the acquiring entity selected by Respondent Fresenius from among those approved by the Commission; *PROVIDED, FURTHER, HOWEVER*, that Respondent Fresenius shall select such entity within five (5) days of receiving notification of the Commission's approval.
5. The trustee shall serve, without bond or other security, at the cost and expense of Respondent Fresenius, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of Respondent Fresenius, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties.

shab therminaterve

VII.

IT IS FURTHER ORDERED that Respondent Fresenius shall notify the Commission at least thirty (30) days prior to:

- A. Any proposed dissolution of Respondent Fresenius,
- B. Any proposed acquisition, merger or consolidation of Respondent Fresenius, or
- C. Any other change in Respondent Fresenius that may affect compliance obligations arising out of this Order, including but not limited to assignment, the creation or dissolution of subsidiaries, or any other change in Respondent Fresenius.

VIII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondent Fresenius, Respondent Fresenius shall permit any duly authorized representative of the Commission:

- A. Access, during office hours of Fresenius and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession or under the control of Fresenius related to compliance with this Order, which copying services shall be provided by Respondent at the request of the authorized representative(s) of the Commission and at the expense of the Respondent; and
- B. Upon five (5) days' notice to Fresenius and without restraint or interference from Fresenius, to interview officers, directors, or employees of Fresenius, who may have counsel present, regarding such matters.

IXa

APPENDIX A

APPENDIX A CLINICS

	Clinic Name	Clinic Address
18	FMC Kapahulu	750 Palani Avenue Honolulu, HI 96816
19	FMC Pearlridge	98-1005 Moanaloa Road, Suite 420 Aiea, HI 96701
20	FMC Honolulu	226 North Kuakini Street, 2 nd Floor Honolulu, HI 96817
21	FMC Kapolei	555 Farrington Highway Kapolei, HI 96707
22	FMC Ko'Olau	47-388 Hui Iwa Street Kaneohe, HI 96744
23	FMC Wahiawa	850 Kilani Avenue Wahiawa, HI 96786
24	FMC Waipahu De Novo	94-862 Kahuailani Street Waipahu, HI 96797
25	FMC Windward	45-480 Kaneohe Bay, Drive D09 Kaneohe, HI 96744
26	FMC Idaho Panhandle	204 North Triangle Drive Ponderay, ID 83852
27	Liberty Hayden	8556 North Wayne Drive Hayden, ID 83835
28	Liberty Daleville	14520 West Davis Drive Daleville, IN 47334
29	Liberty North Granville Ave	3001 North Granville Avenue Muncie, IN 47303
30	Liberty North Street Muncie	2705 West North Street Muncie, IN 47303
31	Liberty Duneland Coffee Creek	3100 Village Point, Suite 101 Chesterton, IN 46304
32	Liberty Kokomo	3760 South Reed Road Kokomo, IN 46902
33	FMC Lafayette	915 Mezzanine Drive Lafayette, IN 47905
34	Liberty Duneland LaPorte	1007 Lincolnway (in process of relocating to 103 18 th Street) LaPorte, IN 46350
35	Liberty Old Alexandria Clinton	7201 Old Alexandria Ferry Road, Suite 6 Clinton, MD 20735



APPENDIX A-2

Appendix A Joint Ventures

APPENDIX B

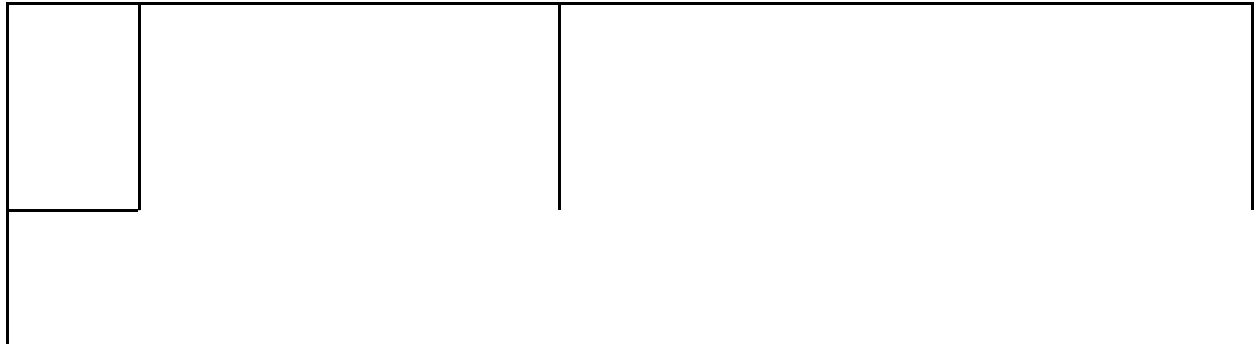
**AREA DEFINITIONS TO APPENDIX A CLINICS, THE
DALLAS JOINT VENTURE INTERESTS CLINICS, THE
MEMPHIS JOINT VENTURE INTERESTS CLINICS,
AND THE ALASKA CLINIC ASSETS**

AREA DEFINITIONS

- ! Five digit numbers refer to zip codes.
- ! Geographic areas bounded by roads include all properties abutting the referenced road (*i.e.*, properties on both sides of the road).
- ! Zip codes or other areas fully surrounded by areas included in the area definition shall be considered part of the area definition.
- ! Area definitions are based on maps submitted to the Commission staff by Fresenius.

	Divested Clinics	Corresponding Area Definition
1	Liberty Alaska LLC	The area in and/or near Anchorage, AK, consisting of: 99501; 99502; 99503; 99504; 99505; 99506; 99507; 99508; 99515; 99516; 99517; 99518; 99520; 99540; 99567; 99577; 99587; 99654; and the portion of 99645 that lies south and west of Chickaloon, AK.
2	Liberty Flagstaff De Novo	The area in and/or near Flagstaff, AZ, consisting of: 86001, 86004, 86030, 86031, 86033, 86034, 86035, 86039, 86040, 86042, 86043, 86044, 86045, 86046, 86047, 86048, 86053, 86054, 86435, and 86510.
3	FMC Berkeley	The area in and/or near Berkeley, CA, consisting of: 94051; 94501; 94530; 94547; 94564; 94601; 94602; the portion of 94605 that lies north of 66 th Avenue; 94606; 94607; 94608; 94609; 94610; 94611; 94612; 94613; 94618; 94619; 94702; 94703; 94704; 94705; 94706; 94707; 94708; 94709; 94710; 94611; 94613; 94618; 94619; 94801; 94803; 94804; 94805; and 94806.





25	FMC Kent County De Novo	The area in and/or near Grand Rapids, MI, consisting of: 49301, 49302, 49306, 49315, 49316, 49319, 49321, 49323, 49330, 49331, 49335, 49339, 49341, 39343, 49344, 49345, 49348, 49418, 49426, 49428, 49503, 49504, 49505, 49506, 49507, 49508, 49509, 49512, 49519, 49525, 49534, 49544, 49546, and 49548.
26	Liberty South East Jackson	The area in and/or near Jackson, MI, consisting of: 49201, 49202, 49203, 49204, 49224, 49230, 49234, 49237, 49240, 49241, 49245, 49246, 49259, the portion of 49264 south of Wilcox Lane, 49269, 49272, 49277, 49283, and 49284.
27	FMC Watervliet	The area in and/or near Watervliet, MI, consisting of: 49013, 49022, 49038, 49043, 49045, 49047, 49057, 49064, 49085, 49098, 49101, 49102, 49103, 49106, 49107, 49111, 49113, 49117, 49120, 49125, 49126, 49127, 49128, and 49129.
28	Fresenius Medical Director Agreement	The area in and/or near Atlantic City, NJ, consisting of: 08201, 08203, 08205, 08221, 08225, 08226, 08330, 08232, 08234, 08241, 08244, 08401, 08402, 08403, 08406, the portion of 08037 that lies east of Ellwood Road, and the portion of 08215 that lies south of Mullica River.
29	FMC Dutchess	The area in and/or near Poughkeepsie, NY, consisting of: 12501, 12507, 12508, 12514, 12522, 12524, 12527, 12531, 12533, 12538, 12540, 12545, 12546, 12564, 12567, 12569, 12570, 12571, 12572, 12578, 12580, 12581, 12582, 12585, 12590, 12592, 12594, 12601, 12603, and 12604.

30	Fresenius' Good Samaritan Management Contract	000 0.0000 0.0000 0.00 rgBT127.4400 689.0400 TD(Marag)Tj33.1200 C

APPENDIX C

MONITOR AGREEMENT

NON-PUBLIC APPENDIX C-1

**COMPENSATION PROVISIONS OF
MONITOR AGREEMENT**

[Redacted From the Public Record Version, But Incorporated By Reference]

APPENDIX D

EXCLUDED TRADEMARKS & DESIGNS

[INTENTIONALLY LEFT BLANK]

NON-PUBLIC APPENDIX E

DSI-FRESENIUS

DIVESTITURE AGREEMENTS

[Redacted From the Public Record Version, But Incorporated By Reference]

NON-PUBLIC APPENDIX F

**LIST OF ALTERNATIVE CLINICS TO APPENDIX A
CLINICS TO DIVEST**

[Redacted From the Public Record Version, But Incorporated By Reference]

NON-PUBLIC APPENDIX F-2

LIST OF ALTERNATIVE JOINT VENTURES TO APPENDIX A-2 JOINT VENTURES

[Redacted From the Public Record Version, But Incorporated By Reference]

NON-PUBLIC APPENDIX F-3

DUBL

LIST OF ALTERNATIVE CLINICS TO DIVES-3

NON-PUBLIC APPENDIX F-4

**LIST OF ALTERNATIVE CLINIC TO DIVEST IN
ANCHORAGE, ALASKA AREA**

[Redacted From the Public Record Version, But Incorporated By Reference]

NON-PUBLIC APPENDIX F-5

**LIST OF ALTERNATIVE CLINIC TO DIVEST IN
MEMPHIS, TENNESSEE AREA**

[Redacted From the Public Record Version, But Incorporated By Reference]

NON-PUBLIC APPENDIX

NON-PUBLIC APPENDIX K

**MEMPHIS CLINICS JOINT VENTURE INTERESTS
DIVESTITURE AGREEMENT**

[Redacted From the Public Record Version, But Incorporated By Reference]