

DECISION AND ORDER
[Public Record Version]

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by Rangers Renal Holdings, LP and US Renal Care, Inc. of Dialysis HoldCo LLC from Dialysis Parent LLC (collectively “Respondents”), and Respondents having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does

not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public recor

subsidiaries, divisions, groups, and affiliates controlled by US Renal Care, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. After the Acquisition, US Renal Care includes DSI.

- B. “DSI” means (a) Dialysis Parent, LLC, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Dialysis Parent, LLC, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each, and (b) Dialysis HoldCo, LLC, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Dialysis HoldCo, LLC, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each .
- C. “Respondents” means US Renal Care and DSI.
- D. “Commission” means the Federal Trade Commission.
- E. “Acquirer(s)” means the following:
 - 1. a Person specified by name in this Order to acquire particular assets or rights that Respondents are required to assign, grant, license, divest, transfer, deliver, or otherwise convey pursuant to this Order and that has been approved by the Commission to accomplish the requirements of this Order in connection with the Commission’s determination to make this Order final and effective; or
 - 2. a Person approved by the Commission to acquire particular assets or rights that Respondents are required to assign, grant, license, divest, transfer, deliver, or otherwise convey pursuant to this Order.
- F. “Acquisition” means Respondent Rangers Renal Holding’s acquisition of Respondent Dialysis HoldCo LLC from Respondent Dialysis Parent, LLC.
- G. “Acquisition Date” means the date on which the Acquisition is consummated.
- H. “Clinic” means a facility that provides hemodialysis or peritoneal dialysis services to patients suffering from kidney disease.
- I. “Clinic’s Physician Contracts” means all agreements to provide the services of a Physician to a Clinic, regardless of whether any of the agreements are with a Physician or with a medical group, including, but not limited to, agreements for the services of a medical director for the Clinic and “joinder” agreements with Physicians in the same medical practice as a medical director of the Clinic.
- J. “Confidential Business Information” means competitively sensitive, proprietary, and all other information that is not in the public domain, owned by or pertaining to, a Person or a Person’s business, and includes, but is not limited to, all customer lists,

- b. financial records,
- c. personnel files,
- d. p

Acquirer, or by another manager or owner of such DSI Laredo Clinic, and who has worked part-time or full-time on the premises of such DSI Laredo Clinic at any time since January 1, 2015, regardless of whether the individual has also worked on the premises of any other Clinic.

Q. “Excluded Assets” means:

1. all cash, cash equivalents, and short term investments of cash;
2. accounts receivable;
3. income tax refunds and tax deposits due to Respondents;
4. unbilled costs and fees, and Medicare bad debt recovery claims, arising before a Clinic is divested to an Acquirer;
5. rights to the names “US Renal Care,” and “DSI,” and any variation of those names (unless otherwise licensed to an Acquirer pursuant to the Order);
6. insurance policies and all claims thereunder;
7. prepaid expenses;
8. minute books (other than governing body minute books of the DSI Laredo Clinic), tax returns, and other corporate books and records;
9. any inter-company balances due to or from Respondents or their affiliates;
10. all benefits plans;
11. all writings and other items that are protected by the attorney-client privilege, the attorney work product doctrine or any other cognizable privilege or protection, except to the extent such information is necessary to the Operation Of A DSI Laredo Clinic;
12. telecommunication systems equipment and applications, and information systems equipment including, but not limited to, computer hardware not physically located at a DSI Laredo Clinic but shared with the DSI Laredo Clinic through local and/or wide area networking systems;
13. computer hardware used in the Operation Of A DSI Laredo Clinic that is (a) not located at the Clinic, and (b) not otherwise to be divested pursuant to a Remedial Agreement;

14. all Supplier or provider numbers issued to Respondents

V. “Laredo, TX Area” means the area in and around Laredo, TX, consisting of the following zip codes: 78040, 78041, 78043, 78044, 78045, 78046, 78067, 78076, 78344, 78360, 78361, and 78369.

W. “Licensed Intangible Property” means intangible property licensed to Respondents from a third party relating to the Operation Of A DSI Laredo Clinic including, but not limited to, intellectual property, software, computer programs (including, but not limited to, electronic medical record systems), patents, know-how, goodwill,
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8. dealing with Payors that pay for products or services offered by such Clinic, including but not limited to, negotiating contracts with such Payors and submitting claims to such Payors; and
 9. dealing with Governmental Approvals Relating To such Clinic or that otherwise regulate the Clinic.
- Z. “Ordinary Course Of Business” means actions taken by any Person in the ordinary course of the normal day-to-day Operation Of A Clinic that is consistent with past practices of such Person in the Operation Of A Clinic, including, but not limited to past practice with respect to amount, timing, and frequency.
- AA. “Payor” means any Person that purchases, reimburses for, or otherwise pays for medical goods or services for themselves or for any other person, including, but not limited to: health insurance companies; preferred provider organizations; point of service organizations; prepaid hospital, medical, or other health service plans; health maintenance organizations; government health benefits programs; employers or other persons providing or administering self-insured health benefits programs; and patients who purchase medical goods or services for themselves.
- BB. “Person” means any natural person, partnership, corporation, association, trust, joint venture, government, government agency, or other business or legal entity.
- CC. “Physician” means a doctor of allopathic medicine (“M.D.”) or a doctor of osteopathic medicine (“D.O.”).
- DD. “Real Property” means the real property on which, or in which, the DSI Laredo Clinic is located, including real property used for parking and for other functions Relating To the Operation Of A DSI Laredo Clinic.
- EE. “Relating To” means pertaining in any way to, and is not limited to that which pertains exclusively or primarily to.
- FF. “Remedial Agreement” means the following:
1. The Satellite Divestiture Agreement, and
 2. any agreement between a Respondent and an Acquirer, including all amendments, exhibits, attachments, and schedules thereto, related to the DSI Laredo Clinics or DSI Laredo Clinic Assets, that has been approved by the Commission to accomplish the requirements of this Order.
- GG. “Satellite Divestiture Agreement” means the following agreements:
1. the Asset Purchase Agreement dated December 16, 2015, by and among Satellite Healthcare Central States, LLC, Satellite Healthcare, Inc., Dialysis

PROVIDED, HOWEVER, if, at the time the Commission determines to make this Order final, the Commission notifies Respondents that Satellite Healthcare, Inc. is not an acceptable Acquirer then, after receipt of such written notification: (1) Respondents shall immediately notify Satellite Healthcare, Inc. of the notice received from the Commission and shall as soon as practicable, but no later than within five (5) business days, effect the rescission of the Satellite Divestiture Agreement; and (2) Respondents shall, within six (6) month

3. assign to the Acquirer all of the Clinic's Physician Contracts for the DSI Laredo Clinics . *PROVIDED HOWEVER*, that (1) if the Acquirer enters into a Clinic Physician Contract for a DSI Laredo Clinic before the DSI Laredo Clinic Assets 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 Remedial Agreement, then Respondents shall not be required to make the assignment for such DSI Laredo Clinic as required by this Paragraph.
4. With respect to all contracts other than Clinic's Physician Contracts, at the Acquirer's option and at the Time Of Divestiture of each DSI Laredo Clinic:
 - a. if such contract can be assigned without third party approval, assign Respondent's rights under the contract to the Acquirer; and
 - b. if such contract can be assigned to the Acquirer only with third party approval, assist and cooperate with the Acquirer in obtaining:
 - i. such third party approval and in assigning the contract to the Acquirer, or
 - ii. a new contract.

D. Respondents shall:

1. at the Time Of Divestiture of each DSI Laredo Clinic, provide to the Acquirer of such Clinic contact information about Payors and Suppliers for the Clinic, and
2. not object to the sharing of Payor and Supplier contract terms Relating To the DSI Laredo Clinics: (i) if the Payor or Supplier consents in writing to such disclosure upon a request by the Acquirer, and (ii) if the Acquirer enters into a confidentiality agreement with Respondent

- b. shall destroy all records of Confidential Business Information relating exclusively to any of the DSI Laredo Clinics, except to the extent that: (1) Respondents are required by law to retain such information, and (2) Respondent's inside or outside attorneys may keep one copy solely for archival purposes, but may not disclose such copy to the rest of Respondents.
- I. At the Time Of Divestiture of each DSI Laredo Clinic, Respondents 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 Respondents in the Operation Of A DSI Laredo Clinic.
- J. For two (2) years following the Time Of Divestiture of each DSI Laredo Clinic, Respondent US Renal Care shall not solicit the business of any patient who received any goods or services from such Clinic between January 1, 2015, and the date of such divestiture, *PROVIDED, HOWEVER*, Respondent US Renal Care 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 patients, and (ii) provide advertising and promotions directly to any patient that initiates discussions with, or makes a request to, any Respondent US Renal Care employee.
- K. Respondents shall convey to the Acquirer of the DSI Laredo Clinics the right to use any Licensed Intangible Property (to the extent permitted by the third-party licensor), if such right is needed for the Operation Of A DSI Laredo Clinic by the Acquirer and if the Acquirer is unable, using commercially reasonable efforts, to obtain equivalent rights from other third parties on commercially reasonable terms and conditions.
- L. Respondents shall do nothing to prevent or discourage Suppliers that, prior to the Time Of Divestiture of any DSI Laredo Clinic, supplied goods and services for use in any DSI Laredo Clinic from continuing to supply goods and services for use in such Clinic.
- M. Respondents shall not terminate any transition services agreement that is a part of any Remedial Agreement before the end of the term approved by the Commission without prior approval of the Commission.
- N. The purpose of Paragraph II of this Order is to ensure the continuation of the DSI Laredo Clinics 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, to ensure that the DSI Laredo Clinics are operated independently of, and

in competition with, Respondent's clinics, and to remedy the lessening of competition alleged in the Commission's Complaint.

III.

IT IS FURTHER ORDERED that:

- A. For a period of ten (10) years from the date this Order is issued, Respondent US Renal Care shall not, without providing advance written notification to the Commission in the manner described in this paragraph, directly or indirectly:
1. acquire any assets of or financial interest in any Clinic located in the Laredo, TX Area; or
 2. enter into any contract to participate in the management or Operation Of A Clinic located in the Laredo, TX area, except to the extent that the contract relates exclusively to:
 - a. off-site lab services or social worker support materials; or
 - b. billing services, collection services, bookkeeping services, accounting services, supply purchasing and logistics services, or the preparation of financial reports and accounts receivable reports (collectively "Such Services"), where appropriate firewalls and confidentiality agreements are implemented to prevent Confidential Business Information of the Clinic from being disclosed to anyone participating in any way in the operation or management of any Clinic owned by Respondent US Renal Care or any Clinic other than the Clinic to which Such Services are being provided.

Said advance written notification shall contain (i) either a detailed term sheet for the proposed acquisition or the proposed agreement with all attachments, and (ii) documents that would be responsive to Item 4(c) of the Premerger Notification and Report Form under the Hart-Scott-Rodino Premerger Notification Act, Section 7A of the Clayton Act, 15 U.S.C. § 18a, and Rules, 16 C.F.R. § 801-803, Relating To the proposed transaction (hereinafter referred to as "the Notification). *PROVIDED, HOWEVER*, (i) no filing fee will be required for the Notification, (ii) an original and one copy of the Notification shall be filed only with the Secretary of the Commission and need not be submitted to the United States Department of Justice, and (iii) the Notification is required from Respondent US Renal Care and not from any other party to the transaction. Respondent US Renal Care shall provide the N sheet for

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.

IV.

IT IS FURTHER ORDERED that:

A. At any time after the Respondents sign the Consent Agreement in this matter, the Commission may appoint a Monitor to assure that the Respondents expeditiously comply with all of its obligations and perform all of its responsibilities as required by this Order, and the Remedial Agreements.

B. The Commission shall select the Monitor, subject to the-1(.)]1127-215516 R((12)47 CId-11.1]1126(US

- b. Monitoring any transition services agreements;
 - c. Assuring that Confidential Business Information is not received or used by Respondents or the Acquirers, except as allowed in this Order.
- 2. The Monitor shall act in a fiduciary capacity for the benefit of the Commission.
- 3. The Monitor shall serve for such time as is necessary to monitor Respondent's compliance with the provisions of this Order, and the Remedial Agreements.
- 4. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to Respondent's personnel, books, documents, records kept in the Ordinary Course Of Business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, related to Respondent's compliance with its obligations under this Order, and the Remedial Agreements. Respondents shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor Respondent's compliance with this Order, and the Remedial Agreements.
- 5. The Monitor shall serve, without bond or other security, at the expense of Respondent US Renal Care on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have authority to employ, at the expense of Respondent US Renal Care, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities. The Monitor shall account for all expenses incurred, including fees for services rendered, subject to the approval of the Commission.
- 6. Respondent US Renal Care shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from malfeasance, gross negligence, willful or wanton acts, or bad faith by the Monitor.
- 7. Respondent US Renal Care shall report to the Monitor in accordance with the requirements of this Order and/or as otherwise provided in any agreement approved by the Commission. The Monitor shall evaluate the reports submitted to the Monitor by Respondent US Renal Care, and any reports submitted by the Acquirer with respect to the performance of Respondent's obligations under this Order, and the Remedial Agreements.

8. Within one (1) month from the date the Monitor is appointed pursuant to this paragraph, every sixty (60) days thereafter, and otherwise as requested by the Commission, the Monitor shall report in writing to the Commission concerning performance by Respondents of its obligations under this Order, and the Remedial Agreements.
 9. Respondents may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *PROVIDED, HOWEVER*, such agreement shall not restrict the Monitor from providing any information to the Commission.
- E. The Commission may, among other things, require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants, to sign an appropriate confidentiality agreement relating to Commission materials and information received in connection with the performance of the Monitor's duties.
 - F. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor in the same manner as provided in this Paragraph IV.
 - G. The Commission may on its own initiative, or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order, and the Remedial 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.

V.

IT IS FURTHER ORDERED that:

- A. If Respondent US Renal Care has not divested, absolutely and in good faith and with the Commission's prior approval all of the DSI Laredo Clinic Assets pursuant to Paragraph II of this Order, the Commission may appoint a Divestiture Trustee ("Trustee") to divest any of the DSI Laredo 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. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondent US Renal Care 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 Divestiture 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 US Renal Care to comply with this Order.

- B. The Commission shall select the Trustee, subject to the consent of Respondent US Renal Care, which consent shall not be unreasonably withheld. The Trustee shall be a Person with experience and expertise in acquisitions and divestitures. If Respondent US Renal Care has not opposed, in writing, including the reasons for opposing, the selection of any proposed Trustee within ten (10) days after receipt of notice by the staff of the Commission to Respondent US Renal Care of the identity of any proposed Trustee, Respondent US Renal Care shall be deemed to have consented to the selection of the proposed Trustee.
- C. Within ten (10) days after the appointment of a Trustee, Respondent US Renal Care shall execute an agreement that, subject to the prior approval of the Commission, transfers to the Trustee all rights and powers necessary to permit the Trustee to effect the divestitures required by this Order.
- D. If a Trustee is appointed by the Commission or a court pursuant to this Order, Respondent US Renal Care shall consent to the following terms and conditions regarding the Trustee's powers, duties, authority, and responsibilities:
 - 1. Subject to the prior approval of the Commission, the Trustee shall have the exclusive power and authority to divest any of the DSI Laredo Clinic Assets that have not been divested pursuant to Paragraph II of this Order.
 - 2. The Trustee shall have twelve (12) months from the date the Commission approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve (12) month period, the Trustee has submitted a divestiture plan or the Commission believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission; *PROVIDED, HOWEVER*, the Commission may extend the divestiture period only two (2) times.
 - 3. Subject to any demonstrated legally recognized privilege, the Trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets that are required to be divested by this Order and to any other relevant information, as the Trustee may request. Respondent US Renal Care shall develop such financial or other information as the Trustee may request and shall cooperate with the Trustee. Respondent US Renal Care shall take no action to interfere with or impede the Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondent US Renal Care 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 US Renal Care's absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner that receives the prior approval of the Commission and to an Acquirer or Acquirers that receive 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 US Renal Care from among those approved by the Commission; *PROVIDED, FURTHER, HOWEVER*, that Respondent US Renal Care 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 US Renal Care, 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 US Renal Care, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Trustee's duties and responsibilities. The Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed Tr5..Btee4bus5.e0.33 0 Tw

5. Not object to sharing with the Acquirer the payor and supplier contract terms relating to the DSI Laredo Clinic Assets: (i) if the payor or supplier consents in writing to such disclosure upon a request by the Acquirer, and (ii) if the Acquirer enters into a confidentiality agreement with Respondents not to

creation or dissolution of subsidiaries, or any other change in Respondent US Renal Care.

IX.

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 Respondents, Respondents shall permit any duly authorized representative of the Commission:

- A. Access, during office hours of Respondents and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence,

Non-Public Appendix A

Satellite Divestiture Agreement

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