

16 C.F.R. § 2.34. Now, in further conformity with the procedure described in Rule 2.34, the Commission makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent DaVita Inc. is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Delaware, with its executive offices and principal place of business located at 2000 16th Street, Denver, Colorado 80202.
2. Respondent Total Renal Care, Inc. is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of California, with its executive offices and principal place of business located at 601 Hawaii Street, Segundo, California 90245.
3. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and of Respondents, and this proceeding is in the public interest.

ORDER

I. Definitions

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

- A. “DaVita” or “Respondent” means DaVita Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, including Total Renal Care, Inc., partnerships, divisions, groups, and affiliates controlled by DaVita Inc., and the respective directors, officers, general partners, employees, agents, representatives, successors, and assigns of each.
- B. “Total Renal Care” or “Respondent” means Total Renal Care, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by Total Renal Care, Inc., and the respective directors, officers, general partners, employees, agents, representatives, successors, and assigns of each.
- C. “University of Utah” means the public research University of the State of Utah, with its office and principal place of business located at 201 Presidents Circle, Salt Lake City, Utah 84112-9018.
- D. “Respondents” means both DaVita and Total Renal Care.
- E. “Commission” means the Federal Trade Commission.
- F. “Acquirer” means: (1) Sanderling or (2) any other Person that acquires the Divestiture Clinic Assets pursuant to this Order.

- G. “Acquisition” means the proposed acquisition described in the Asset Purchase Agreement dated September 24, 2021, between Total Renal Care, Inc., a corporation owned by DaVita Inc., and the University of Utah.
- H. “Acquisition Date” means the date the Acquisition is consummated.
- I. “Business Information” means books, records, data, and information, wherever located and however stored, including electronic medical records, documents, written information, graphic materials, and data and information in electronic format. Business Information includes records and information relating to sales, marketing, advertising, personnel, accounting, business strategy, information technology systems, customers, suppliers, research and development, registrations, licenses, permits (to the extent transferable), and operations. For clarity, Business Information includes rights and control of any owner of a Divestiture Clinic over information and material provided to any other Person.
- J. “Clinic” means a facility that provides outpatient hemodialysis or peritoneal dialysis services to patients suffering from kidney disease.
- K. “Clinic Physician Contract” 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, 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.
- L. “Confidential Business Information” means all Business Information not in the public domain that is related to or used in connection with the Divestiture Clinic Assets or the Dialysis Business of any Divestiture Clinic, except for any information that was or becomes generally available to the public other than as a result of disclosure by Respondents.
- M. “Consent” means any approval, consent, ratification, waiver, or other authorization.
- N. “Contract” means an agreement, contract, mutual understanding, arrangement, license agreement, lease, consensual obligation, commitment, promise and undertaking (whether written or oral and whether express or implied), whether or not legally binding.
- O. “Dialysis Business” means all activities relating to the business of a Clinic, including:
1. Attracting patients to such Clinic for dialysis services;
 2. Providing dialysis services to patients of such Clinic, and dealing with their physicians, including, services relating to hemodialysis and peritoneal dialysis;

for use in the operation of the Dialysis Business of each of the Divestiture Clinics respectively, or if leased, the leasehold interest therein.

- Z. “Governmental Permit” means all Consents, licenses, permits, approvals, registrations, certificates, rights, or other authorizations from any governmental entity necessary to effect the complete transfer and divestiture of the Divestiture Clinic Assets to the Acquirer and for such Acquirer to operate the Divestiture Clinic.

)i 2n44 37 2t

e

- JJ. “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, #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, #1800, Nashville, Tennessee 37219, and (3) any Person controlled by or under common control of Sanderling Renal Services-USA LLC or SRS-Utah, LLC.
- KK. “Transition Assistance” means technical services, personnel, assistance, training, and other logistical, administrative, and other transitional support as required by the Acquirer to facilitate the transfer of the Divestiture Clinic Assets to the Acquirer, including training, personnel, and support related to: audits, finance and accounting, accounts receivable, accounts payable, employee benefits, payroll, pensions, human resources, general medicedi

F. Respondents shall:

1. Place no restrictions on the use by the Acquirer of any of the Divestiture Clinic Assets to be divested to such Acquirer, or interfere with or otherwise attempt to interfere with any Acquirer's use of any of the Divestiture Clinic Assets to be divested to such Acquirer, including seeking or requesting the imposition of governmental restrictions on the Acquirer's business operations relating to the Divestiture Clinic Assets.
2. Assign to the Acquirer all of the Clinic Physician Contracts related to each Divestiture Clinic

, that (i) if the Acquirer enters into a Clinic Physician Contract for a Divestiture Clinic before such Clinics are divested pursuant to Paragraph II.A of this Order, and (ii) the Acquirer certifies its receipt of such contract and attaches it as part of the Divestiture Agreement, then Respondents shall not be required to make the assignment for such Clinics as required by Section II.

3. With respect to all contracts included in the Divestiture Clinic Assets other than Clinic Physician Contracts, at the Acquirer's option and on the Divestiture Date of each Divestiture Clinic:
 - a. if such contract can be assigned without third party approval, assign Respondents' 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 such third
Lb.

III. Divestiture Agreement

IT IS FURTHERED ORDERED that:

- A. Each Divestiture Agreement shall be incorporated by reference into this Order and made a part hereof, and any failure by Respondents to comply with the terms of a Divestiture Agreement shall constitute a violation of this Order; _____, that no Divestiture Agreement shall limit, or be construed to limit, the terms of this Order. To the extent any provision in the Divestiture Agreement varies from or conflicts with any provision in the Order such that Respondents cannot fully comply with both, Respondents shall comply with the Order.
- B. Respondents shall not modify or amend the terms of the Divestiture Agreement after the Commission issues the Order without the prior approval of the Commission, except as otherwise provided in Commission Rule 2.41(f)(5), 16 C.F.R. § 2.41(f)(5).

IV. Transition Assistance

IT IS FURTHER ORDERED that:

- A. At the option of the Acquirer, Respondents shall provide the Acquirer with Transition Assistance sufficient to (1) efficiently transfer the Divestiture Clinic Assets and the related Dialysis Business to the Acquirer, and (2) assist the Acquirer in operating the Divestiture Clinics in all material respects in the manner in which they were operated prior to the Acquisition.
- B. Respondents shall provide such Transition Assistance:

- 1. ~~Respondents shall provide such Transition Assistance:~~

- C. Respondents shall allow the Acquirer to terminate, in whole or part, any Transition Assistance provisions of the Divestiture Agreement upon commercially reasonable notice and without cost or penalty.
- D. Respondents shall not cease providing Transition Assistance due to a breach by the Acquirer of the Divestiture Agreement, and shall not limit any damages (including indirect, special, and consequential damages) that the Acquirer would be entitled to receive in the event of Respondents' breach of the Divestiture Agreement.

V. Employees

~~Idu T e DI Span FcR)-3)4 (s)1fowd (4'00p)E2)E2)Dgn)R)97) (0)Tic)40r (0)34f4 D(0)4~~

continue in their positions, and as may be necessary, to facilitate the employment

VII. Confidentiality

IT IS FURTHER ORDERED that:

- A. Respondents shall (x) not disclose (including as to Respondents' employees), and (y) not use, for any reason or purpose, any Confidential Business Information received or maintained by Respondents, that Respondents may disclose or use such Confidential Business Information in the course of:
1. Performing their obligations or as permitted under the Orders or any Divestiture Agreement; or
 2. Complying with financial reporting requirements, historical record-keeping for audit purposes, obtaining legal advice, prosecuting or defending legal claims, investigations, or enforcing actions threatened or brought against the Divestiture Clinic Assets or Divestiture Clinics, or as required by law, rule or regulation.
- B. Respondents shall only disclose Confidential Business Information to an employee or any other Person if disclosure is permitted in Paragraph VII.A and the employee or other Person has signed an agreement to maintain the confidentiality of such information and not violate the disclosure requirements of this Order.
- C. Respondents shall enforce the terms of Section VII and take necessary actions to ensure that their employees or other Persons comply with its terms, including implementing access and data controls, training of employees, and taking other actions that Respondents would take to protect their own trade secrets and proprietary information.

VIII. Monitor

IT IS FURTHER ORDERED that:

- A. The Commission appoints Richard Shermer of R. Shermer & Co. as the Monitor to observe and report on Respondents' compliance with their obligations as set forth in the Orders.
- B. The Respondents and the Monitor may enter into an agreement relating to the Mo2 (t th)2 Td1

from or conflicts with any provision in the Monitor Sections, Respondents and the Monitor shall comply with the Monitor Sections; and

3.

Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within 10 days after notice by the staff of the Commission to Respondents of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.

D. Not later than 10 days after the appointment of a Divestiture Trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the relevant divestiture or other action required by the Order.

E. If a Divestiture Trustee is appointed by the Commission or a court pursuant to Section IX, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:

1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver, or otherwise convey the assets that are required by this Order to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed;

2. The Divestiture Trustee shall have one year from the date the Commission approves the trustee trust agreement described herein to accomplish the divestitures, which shall be subject to the prior approval of the Commission. If, however, at the end of the one year period, the Divestiture Trustee has submitted a plan of divestiture or the Commission believes that the divestitures can be achieved within a reasonable time, the divestiture period may be extended by the Commission,

the Commission may extend the divestiture period only 2 times;

3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered, or otherwise conveyed by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestitures. Any delays in divestitures caused by Respondents shall extend the time for divestitures under Section IX in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court;

8. The Divestiture Trustee shall report in writing to Respondents and to the Commission every 30 days concerning the Divestiture Trustee's efforts to accomplish the divestiture; and
9. Respondents may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement,

, that such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.

- F. The Commission may, among other things, require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a confidentiality agreement related to Commission materials and information received in connection with the performance of the Divestiture Trustee's duties.
- G. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in Section IX, and who will have the same authority and responsibilities of the original Divestiture Trustee pursuant to Section IX.
- H. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestitures and other obligations or action required by this Order.

X. Prior Approval

IT IS FURTHERED ORDERED that Respondents shall not, directly or indirectly, through subsidiaries, partnerships, or otherwise, without the prior approval of the Commission:

- A. Acquire any ownership or leasehold interest in any facility that has operated as a Clinic, within the 6e t,5 Td{(r)3 (l)-2 (e)4 (a)tS)Tc 0 Tw -20.e 6elity tsit-6 (t-6 q,t)-2 (9-10 (itu)]-1 (e)4 (,)-10 (v

Respondents have implemented and plan to implement to comply with each paragraph of the Orders.

3. For a period of 5 years after filing a Compliance Report, each Respondent shall retain all material written communications with each party identified in the compliance report and all non-privileged internal memoranda, reports, and recommendations concerning fulfilling Respondents' obligations under the Orders and provide copies of these documents to Commission staff upon request.
4. Respondents shall verify each compliance report in the manner set forth in 28 U.S.C. § 1746 by the Chief Executive Officer or another officer or employee specifically authorized to perform this function. Respondents shall submit an original and 2 copies of each compliance report as required by Commission Rule 2.41(a), 16 C.F.R. § 2.41(a), including a paper original submitted to the Secretary of the Commission and electronic copies to the Secretary at ElectronicFilings@ftc.gov and to the Compliance Division at bccompliance@ftc.gov, that Respondents need only file electronic copies of the interim reports required by Paragraph XI.B.1 (a). In addition, Respondents shall provide a copy of each compliance report to the Monitor if the Commission has appointed one in this matter.

XII. Change in Respondent

IT IS FURTHER ORDERED that each Respondent shall notify the Commission at least 30 days prior to:

- A. The proposed dissolution of DaVita Inc. or Total Renal Care Inc., respectively;
- B. The proposed acquisition, merger, or consolidation of DaVita Inc. or Total Renal Care Inc., respectively; or
- C. Any other change in Respondents, including assignment and the creation, sale, or dissolution of subsidiaries, if such change may affect compliance obligations arising out of this Order.

XIII. Access

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 and upon 5 days' notice to Respondents, Respondents shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of the Respondents 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 the Respondents related to compliance with this Order, which copying services shall be provided by the Respondents at their expense; and

- B. To interview officers, directors, or employees of the Respondents, who may have counsel present, regarding such matters.

XIV. Purpose

IT IS FURTHER ORDERED that the purpose of this Order is to remedy the harm to competition the Commission alleged in its Complaint and ensure the Acquirer can operate the Dialysis Business related to each of the Divestiture Clinics and Divestiture Clinic Assets at least equivalent in all material respects to the manner in which the Dialysis Business was operated prior to the Acquisition.

XV. Term

IT IS FURTHER ORDERED that this Order shall terminate on January 10, 2032.

By the Commission.

April J. Tabor
Secretary

SEAL:
ISSUED: January 12, 2022

NONPUBLIC APPENDIX I

Divestiture Agreements

APPENDIX II

Excluded Assets

1. All cash, cash equivalents, and short term investments of cash, securities and other instruments;
2. Accounts receivable and rights to bill (including all proceeds thereof) for all services delivered or performed and products provided in connection the business of a Clinic before a Clinic is divested to an Acquirer or which remain outstanding and unpaid before a Clinic is divested to an Acquirer;
3. General ledgers and accounting records of University of Utah;
4. Income tax refunds and tax deposits due to Respondents;
5. Unbilled costs and fees, recoupments, claims, demands, deposits, rebates, and bad debt recovery claims against any Payor including Medicare, arising before a Clinic is divested to an Acquirer;
6. Rights to the names “DaVita” and “University of Utah” and any variation of those names (unless otherwise licensed to an Acquirer pursuant to the Order) and other copyrights, trademarks, trade names, service marks, and logos relating to the “DaVita” and “University of Utah” names;
7. Insurance policies and all benefits and claims thereunder;
8. Rights in connection with and assets of University Health Plans;
9. Minute books, personnel records, (other than governing body minute books of a Clinic), tax returns, and other corporate books and records;
10. Any inter-company balances due to or from Respondents or its affiliates;
11. All employee benefits plans;
12. 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 Clinic;
13. All DaVita or University of Utah software;
14. DaVita and University of Utah e-mail addresses, websites, and domain names;

15.