UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS:	**Lina M. Kahn, Chair** **Noah Joshua Phillips** **Rohit Chopra** **Rebecca Kelly Slaughter** **Christine S. Wilson**

In the Matter of **DaVita Inc.,** **a corporation, and** **Total Renal Care, Inc.,** **a corporation.**	)))))))))	**Docket No. C-**

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act ("FTC Act"), and its authority thereunder, the Federal Trade Commission ("Commission"), having reason to believe that Respondent DaVita Inc., through its wholly-owned subsidiary, Total Renal Care, Inc. ("DaVita"), subject to the jurisdiction of the Commission, entered into an agreement to acquire substantially all the dialysis assets of the dialysis business of the University of Utah ("the University"), in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and that such acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. RESPONDENT

1. Respondent DaVita 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. DaVita is the largest provider of dialysis services in the United States. DaVita owns and manages outpatient dialysis facilities throughout the United States and provides acute inpatient dialysis services within hospitals.

2. Respondent Total Renal Care, Inc. is a wholly-owned subsidiary of DaVita and 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 businesses located at 601 Hawaii Street, Segundo, California 90245.

3. DaVita is, and at all times relevant herein has been, engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act as amended, 5 U.S.C. § 12, and are companies whose business is in or affects commerce, as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. § 44.

II. THE ACQUIRED ASSETS

4. The University is an academic medical health system and 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.

5. DaVita proposes to acquire the University's 18 dialysis clinics and associated assets. The clinics extend from the southeast corner of Nevada to the southern part of Idaho, with the majority of the clinics in Utah along the corridor that connects Las Vegas and Boise.

III. THE PROPOSED ACQUISITION

6. Pursuant to an Asset Purchase Agreement ("Agreement") between DaVita and the University dated September 23, 2021, DaVita will acquire all rights, titles, and interests in, and substantially all the assets and properties of the University's dialysis business, including its 18 dialysis clinics, in a non-HSR-reportable transaction.

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

IV. THE RELEVANT MARKET

8. The relevant line of commerce in which to analyze the effects of the Agreement is the provision of outpatient dialysis services. Patients receiving dialysis services have end stage renal disease ("ESRD"), a chronic disease characterized by a near total loss of function of the kidneys. ESRD is fatal if not treated.

9. The only alternative to dialysis treatment for patients suffering from ESRD is curing the disease through a kidney transplant. However, many ESRD patients are not viable transplant candidates, and for those who are, the wait time for donor kidneys, can exceed three years, during which ESRD patients must receive dialysis treatment. Additionally, most ESRD patients are not viable candidates for home dialysis. As a result, many ESRD patients have no alternative to outpatient dialysis treatment.

10. The distance ESRD patients will travel to receive dialysis treatments defines the outer boundaries of the relevant geographic markets for the provision of outpatient dialysis services. Because ESRD patients often suffer from multiple

health problems and may require assistance traveling to and from the dialysis clinic, these patients will not or cannot travel long distances to receive dialysis treatment. Also, most ESRD patients receive dialysis treatment three times per week in sessions lasting between three and four hours. Accordingly, as a general rule, most ESRD patients are unwilling or unable to travel more than 30 minutes or 30 miles for treatment, although travel times and distances may vary by location.

11. The relevant geographic market within which to assess the competitive effects of the Agreement is the greater Provo, Utah area. The relevant geographic market is defined by the contiguous communities located along Interstate 15 east of Utah Lake and south of Salt Lake City. The market is centered on Provo, Utah and extends north to Orem, Utah and south to Payson, Utah.

V. MARKET STRUCTURE

12. In Utah there are currently five providers of outpatient dialysis services: the University, Fresenius, DaVita, Intermountain Healthcare, and Anthem. In the greater Provo market, there are only three providers: the University (which has three clinics in the market), DaVita (four clinics), and Fresenius (one clinic). The University and DaVita directly and substantially compete in the relevant geographic market.

VI. ENTRY CONDITIONS

13. Entry into the relevant market described in Section IV would not be likely, timely, or sufficient in magnitude, character, and scope to deter or counteract the expected anticompetitive effects of the Agreement.

14. The most significant entry barrier is engaging a nephrologist with an established referral base to serve as the dialysis clinic's medical director. By law, each dialysis clinic must have a nephrologist medical director. Locating and contracting with a nephrologist to serve as medical director is difficult because clinics typically enter into exclusive contractual arrangements with a nephrologist who is paid a medical director fee. Finding patients may also be difficult if the nephrologist does not have local ties, because most nephrologists typically refer their patients to the clinic at which they (or one of their partners) are medical director. A potential entrant into the relevant markets would also need to develop a reputation for consistent quality and service before referrals would be made. Additionally, other things being equal, an area must have a low penetration of dialysis clinics and a high ratio of commercial to Medicare patients to attract entry. The absence of these attributes is an additional impediment to entry into the relevant market.

VII. EFFECTS OF THE AGREEMENT

15. The effects of the Agreement, if consummated, may be to substantially lessen competition and to tend to create a monopoly in the relevant market in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45. The Acquisition would eliminate actual, direct, and substantial competition between DaVita and University in the market for outpatient dialysis services in the relevant area, increasing the ability of the merged entity unilaterally to raise prices for outpatient dialysis services and reducing incentives to improve service or quality in the relevant market.

VIII. VIOLATIONS CHARGED

16. The Acquisition, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this ______ day of _______________, 2021 issues its Complaint against said Respondent.

By the Commission.

April J. Tabor
Secretary

SEAL: