ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDERS
TO AID PUBLIC COMMENT

In the Matter of Rangers Renal Holdings LP,
File No. 151-0215

The Federal Trade Commission (“"Commission”) has accepted, subject to final approval, an Agreement Containing Consent Orders (“Consent Agreement”) from Rangers Renal Holdings LP (“Rangers Holdings”), the parent of US Renal Care, Inc. (“USRC”), and Dialysis Holdco, LLC (“Dialysis Holdco”), the parent of Dialysis Newco, Inc. d/b/a DSI Renal (“DSI”). The purpose of the Consent Agreement is to remedy the anticompetitive effects resulting from Rangers Holdings’ purchase of Dialysis Parent, LLC (“Dialysis Parent”). Dialysis Parent is the parent of Dialysis Holdco. Under the terms of the Consent Agreement, USRC is required to divest DSI’s three dialysis clinics in Laredo, Texas.

The Consent Agreement has been placed on the public record for 30 days to solicit comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the Consent Agreement and the comments received, and will decide whether it should withdraw from the Consent Agreement, modify it, or make final the Decision and Order (“Order”).

The Transaction

Pursuant to an agreement dated August 21, 2015, Rangers Holdings proposes to acquire all of the outstanding membership interest in Dialysis Holdco from Dialysis Parent in a transaction valued at approximately $640 million. Dialysis Parent is currently the sole owner of all membership interests in Dialysis Holdco. The Commission ’s Complaint alleges that the proposed acquisition, if consummated, would violate 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, by substantially lessening competition in one market—Laredo, Texas—for the provision of outpatient dialysis services.

The Parties

Privately owned and headquartered in Plano, Texas, USRC is the third-largest provider of outpatient dialysis services in the United States. USRC operates more than 200 outpatient dialysis clinics in 20 states and treats approximately 15,500 patients.

DSI, headquartered in Nashville, Tennessee, is a privately held company and the sixth-largest provider of outpatient dialysis services in the United States. DSI operates 100 dialysis centers, providing dialysis services to approximately 7,500 patients in 22 states.

The Relevant Product and Structure of the Markets

Outpatient dialysis services is the relevant product market in which to assess the effects of the proposed transaction. For patients suffering from End Stage Renal Disease ("ESRD"), dialysis treatments are a life-sustaining therapy that replaces the function of the kidneys by removing toxins and excess fluid from the blood. Most ESRD patients receive dialysis treatment three times per week in sessions lasting between three and five hours. Kidney transplantation is the only alternative to dialysis for ESRD patients. However, the wait-time for donor kidneys – during which ESRD patients must receive dialysis treatments – can exceed five years. Additionally, many ESRD patients are not viable transplant candidates. As a result, ESRD patients have no alternative to dialysis treatments. ESRD patients who are not hospitalized must obtain dialysis treatments from outpatient dialysis clinics.

Dialysis services are provided in local geographic markets limited by the distance ESRD patients are able to travel to receive treatments. ESRD patients are often very ill and suffer from multiple health problems, making travel further than 30 miles or 30 minutes very difficult. As a result, competition among dialysis clinics occurs at a local level, corresponding to metropolitan areas or subsets thereof. The exact contours of each market vary depending on traffic patterns, local geography, and the patient's proximity to the nearest center.

Entry

Entry into the outpatient dialysis services markets identified in the Commission's Complaint is not likely to occur in a timely manner at a level sufficient to deter or counteract the likely anticompetitive effects of the proposed transaction. The primary barrier to entry is the difficulty associated with locating nephrologists with established patient pools to serve as medical directors. By law, each dialysis clinic must have a nephrologist medical director. As a practical matter, medical directors are also essential to the success of a clinic because they are the primary source of referrals. In the relevant geographic market, there are few unencumbered nephrologists and few outside nephrologists willing to move into the area. These obstacles make entry in the affected market more challenging and less likely to avert the anticompetitive effects of the transaction.

Effects of Acquisition

The geographic market identified in the Complaint is highly concentrated. The proposed acquisition would cause the number of providers to drop from three to two in this market leaving USRC with a dominant position in Laredo, Texas. The post-acquisition HHI for this market exceeds 4000, and the change in HHI is more than 1200. The evidence shows that health insurance companies and other private payers who pay for dialysis services used by their members benefit from direct competition between USRC and DSI when negotiating rates charged by dialysis providers in this market. The high post-acquisition concentration level, along with the elimination of USRC's and

DSI's head-to-head competition suggest the proposed combination likely would result in higher prices for outpatient dialysis services in this geographic market. In addition, the evidence shows that market participants compete for patients on a number of quality measures—including quality of facilities, wait times, operating hours, and location. Given the high post-acquisition concentration level, the proposed combination would likely result in diminished service and quality for patients in Laredo, Texas.

The Consent Agreement

The Consent Agreement remedies the proposed acquisition's anticompetitive effects in the Laredo, Texas market by requiring USRC to divest DSI's three outpatient dialysis clinics to Satellite Healthcare Inc. ("Satellite").

As part of these divestitures, USRC is required to obtain the agreement of the medical director affiliated with the divested clinics to continue providing physician services after the transfer of ownership to the buyer. Similarly, the Consent Agreement requires USRC to obtain the consent of all lessors necessary to assign the leases for the real property associated with the divested clinics to the buyer. These provisions ensure that the buyer will have the assets necessary to operate the divested clinics in a competitive manner.

The Consent Agreement contains several additional provisions designed to ensure that the divestitures are successful. First, the Consent Agreement provides the buyer with the opportunity to interview and hire employees affiliated with the divested clinics and prevents USRC from offering these employees incentives to decline the buyer's offer of employment. This will ensure that the buyer has access to patient care and supervisory staff who are familiar with the clinics' patients and the local physicians. Second, the Consent Agreement prevents USRC from contracting with the medical director affiliated with the divested clinics for three years. This provides the buyer with sufficient time to build goodwill and a working relationship with its medical director before USRC can attempt to capitalize on DSI's prior relationship in soliciting his services. Third, to ensure continuity of patient care and records as the buyer implements its quality care, billing, and supply systems, the Consent Agreement requires USRC to provide transition services for a period up to 12 months. Firewalls and confidentiality agreements have been established to ensure that competitively sensitive information is not exchanged. Fourth, the Consent Agreement requires USRC to provide the buyer with a license to use USRC's policies, procedures, and medical protocols, as well as the option to obtain USRC's medical protocols, which will further enhance the buyer's ability to continue to care for patients in the clinics that will be divested. The Consent Agreement requires USRC to provide notice to the Commission prior to any acquisitions of dialysis clinics in the market addressed by the Consent Agreement in order to ensure that subsequent acquisitions do not adversely impact competition in that market or undermine the remedial goals of the proposed order. Finally, the Consent Agreement allows the Commission to appoint a monitor to oversee USRC's compliance with the Consent Agreement.

The Commission is satisfied that Satellite is a qualified acquirer of the divested assets. Satellite is currently a significant operator of dialysis clinics, operating over 70 outpatient and home dialysis clinics since 1973.

The purpose of this analysis is to facilitate public comment on the Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Decision and Order or the Order to Maintain Assets, or to modify their terms in any way.