

1. Respondent DaVita is a corporation organized, existing, and doing business under principal place of the business located at 2000 16<sup>th</sup> Street, Denver, Colorado 80202. DaVita is the assignor of the rights of its subsidiaries in the United States and
2. Respondent Total Renal Care, Inc. is a wholly-owned subsidiary of DaVita and is incorporated in the State of California, existing, and doing business and principal place of the 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

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**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: