

COPY

1 BILL LOCKYER
 Attorney General of the State of California
 2 RICHARD M. FRANK
 Chief Deputy Attorney General
 3 THOMAS GREENE
 Chief Assistant Attorney General
 4 KATHLEEN E. FOOTE
 Senior Assistant Attorney General
 5 BARBARA M. MOTZ, State Bar No. 66933
 Supervising Deputy Attorney General
 6 PATRICIA L. NAGLER, State Bar No. 101150
 Deputy Attorney General
 7 300 S. Spring Street, Suite 1700
 Los Angeles, California 90013
 8 E-mail: Penny.Nagler@doj.ca.gov
 Telephone: (213) 620-6411
 9 Facsimile: (213) 620-6005

FILED
 CLERK, U.S. DISTRICT COURT
 OCT - 5 2005
 CENTRAL DISTRICT OF CALIFORNIA
 BY DEPUTY

SCANNED

Priority
 Send
 Enter
 Closed
 JS-5/JS-6
 JS-2/JS-3
 Scan Only

10 Attorneys for Plaintiff

LODGED

11 10-5-05
 12 U.S. DISTRICT COURT
 13 ALBANY DISTRICT OF CALIF.
 14 LOS ANGELES
 15 2005 OCT 5

IN THE UNITED STATES DISTRICT COURT
 FOR THE CENTRAL DISTRICT OF CALIFORNIA

CV05-7190 RSWL P10X

16 STATE OF CALIFORNIA,
 17 Plaintiff,
 18 v.
 19 DAVITA, INC., a Delaware Corporation,
 20 GAMBRO HEALTHCARE, INC., a
 subsidiary of GAMBRO AB,
 21 Defendants.

Case No. FINAL JUDGMENT AND
 CONSENT DECREE

DOCKETED ON CM
 OCT - 6 2005
 BY [Signature] 005

23 PLAINTIFF, THE STATE OF CALIFORNIA, filed its Complaint herein and
 24 Defendants, DaVita, Inc. ("DaVita") and Gambro Healthcare Inc., a subsidiary of
 25 Gambro AB ("Gambro"), were duly served with copies of the Summons and
 26 Complaint. DaVita and Gambro, by and through their attorneys, have consented to the
 27 entry of this Final Judgment and Consent Decree ("Consent Decree") without trial or
 28 adjudication of any issue of fact or law herein and have waived notice of presentation

7

1 of this Consent Decree. This Consent Decree does not constitute any evidence
2 against or an admission by any party with respect to any issue of law or fact herein,
3 other than the jurisdictional facts alleged in the Complaint.

4 WHEREAS, the California Attorney General, on behalf of Plaintiff, State of
5 California, has determined that the merger of DaVita and Gambro is unlawful, in
6 violation of federal antitrust laws (Section 7 of the Clayton Act as amended, (15
7 U.S.C. § 18), Section 1 of the Sherman Act (15 U.S.C. § 1)), and state Unfair
8 Competition Law (California Business and Professions Code § 17200 et seq.);

9 WHEREAS, DaVita and Gambro do not admit and continue to deny such
10 transaction is unlawful;

11 WHEREAS, the State of California, DaVita and Gambro wish to avoid litigation
12 and to resolve the controversy on mutually acceptable terms;

13 WHEREAS, DaVita and Gambro have agreed to be bound by the provisions of
14 this Consent Decree and there is no just reason for delay in its entry;

15 WHEREAS, prompt and certain divestiture of certain assets is an essential
16 element of this agreement and the parties intend that DaVita and Gambro divest these
17 assets as viable dialysis care centers to ensure the assets will remain competitive,
18 viable and on-going; and

19 WHEREAS, DaVita and Gambro have represented to the State of California that
20 they can comply with the obligations set forth in this Consent Decree and full relief,
21 as provided in this Consent Decree, can be accomplished;

22 NOW, THEREFORE, before the taking of any testimony, and without trial or
23 adjudication of any issue of fact or law herein, and upon consent of the parties
24 hereto, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

25 I.

26 JURISDICTION

27 This Court has jurisdiction over the subject matter of this action and over each
28 of the parties hereto. The Complaint states a claim upon which relief may be granted

1 against DaVita and Gambro under Section 1 of the Sherman Act (15 U.S.C. § 1),
2 Section 7 of the Clayton Act, as amended (15 U.S.C. § 18), and California Business
3 and Professions Code section 17200 *et seq.* The Attorney General for the State of
4 California, Bill Lockyer, has authority to bring this action pursuant to Section 16 of
5 the Clayton Act (15 U.S.C. § 26) and California Business and Professions Code
6 sections 17204 and 17206.

7 II.

8 DEFINITIONS

9 As used in this Consent Decree, the following definitions shall apply:

10 A. "DaVita" means DaVita Inc., its directors, officers, employees, agents,
11 representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions,
12 groups and affiliates controlled by DaVita Inc. (including, after the Effective Date,
13 Gambro Healthcare Inc.), and the respective directors, officers, employees, agents,
14 representatives, successors, and assigns of each.

15 B. "Gambro" means Gambro Healthcare Inc., its directors, officers,
16 employees, agents, representatives, successors, and assigns; and its joint ventures,
17 subsidiaries, divisions, groups and affiliates controlled by Gambro Healthcare Inc., and
18 the respective directors, officers, employees, agents, representatives, successors, and
19 assigns of each.

20 C. "Attorney General" means the Attorney General of the State of California.

21 D. "Commission" means the Federal Trade Commission.

22 E. "Commission Decision and Order" or "Commission Order" means the
23 Order entered by the Federal Trade Commission in the Matter of DaVita, Inc., a
24 Corporation.

25 F. "Acquirer" and "Acquirers" means Renal Advantage, the Westside Clinic
26 Acquirer, the Colton Partnership, Peninsula Nephrology, and each Person that receives
27 the prior approval of the Attorney General to acquire any of the Appendix A Clinic
28 Assets or the Owned Real Property pursuant to Paragraphs IV or VII of this Consent

1 Decree.

2 G. "Appendix A Clinics" means Clinics listed in Appendix A to this Consent

3 Decree.

4 H. "Appendix A Clinic Assets" means the Appendix A Clinics, and all Assets
5 Associated with each of those Clinics, except for the Owned Real Property.

6 I. "Assets Associated" means the following assets Relating To the Operation
7 Of A Clinic:

8 1. all rights under the Clinic's Physician Contracts;

9 2. leases for the Real Property of the Clinic;

10 3. consumable or disposable inventory, including, but not limited to,
11 janitorial, office, and medical supplies, and at least ten (10) treatment days of dialysis
12 supplies and pharmaceuticals, including, but not limited to, erythropoietin;

13 4. all rights, title and interest of DaVita in any tangible property (except for
14 consumable or disposable inventory) that has been on the premises of the Clinic at any
15 time since July 28, 2005, including, but not limited to, all equipment, furnishings,
16 fixtures, improvements, and appurtenances;

17 5. any interest held by DaVita in the Real Property Of The Clinic,
18 PROVIDED, HOWEVER, "Assets Associated" does not mean the Owned Real
19 Property, which is being divested separately pursuant to Paragraph IV.A.5. of the
20 Consent Decree;

21 6. books, records, files, correspondence, manuals, computer printouts,
22 databases, and other documents Relating To the Operation Of The Clinic located on
23 the premises of the Clinic or in the possession of the Regional Manager responsible for
24 such Clinic (or copies thereof where DaVita has a legal obligation to maintain the
25 original document), including, but not limited to:

26 a. documents containing information Relating To patients (to the
27 extent transferable under applicable law), including, but not limited
28 to, medical records,

- 1 b. financial records,
- 2 c. personnel files,
- 3 d. Physician lists and other records of the Clinic's dealings with
- 4 Physicians,
- 5 e. maintenance records,
- 6 f. documents Relating To policies and procedures,
- 7 g. documents Relating To quality control,
- 8 h. documents Relating To Payors,
- 9 i. documents Relating To Suppliers,
- 10 j. documents Relating To Clinics other than the Clinic To Be
- 11 Divested, *PROVIDED, HOWEVER*, if such documents are located
- 12 other than on the premises of the Clinic To Be Divested, DaVita
- 13 may submit a copy of the document with the portions not Relating
- 14 To the Clinic To Be Divested redacted, and
- 15 k. copies of contracts with Payors and Suppliers, unless such
- 16 contracts cannot, according to their terms, be disclosed to third
- 17 parties even with the permission of DaVita to make such
- 18 disclosure;

19 7. DaVita's Medicare and Medicaid provider numbers, to the extent
20 transferable;

21 8. all permits and licenses, to the extent transferable;

22 9. Intangible Property relating exclusively to the Operation Of The Clinic;
23 and a royalty-free perpetual worldwide license for the use, without any limitation, of
24 all other Intangible Property Relating To the Operation Of The Clinic (including the
25 right to transfer or sublicense such Intangible Property, exclusively or nonexclusively,
26 to others by any means); and

27 //

28 //

1 10. assets that are used in, or necessary for, the Operation Of The Clinic.
2 *PROVIDED, HOWEVER*, that "Assets Associated" does not include Excluded
3 Assets.

4 J. "Assets To Be Divested" means the Appendix A Clinic Assets, the
5 Westside Clinic Assets, the Colton Clinic Assets, and the Owned Real Property.

6 K. "Clinic" means a facility that provides hemodialysis or peritoneal dialysis
7 services to patients suffering from kidney disease.

8 L. "Clinic's Physician Contracts" means all agreements to provide the
9 services of a Physician to a Clinic, regardless of whether any of the agreements are
10 with a Physician or with a medical group, including, but not limited to, agreements for
11 the services of a medical director for the Clinic and "joiner" agreements with
12 Physicians in the same medical practice as a medical director of the Clinic.

13 M. "Clinic To Be Divested" and "Clinics To Be Divested" means the
14 Appendix A Clinics, the Westside Clinic, the Colton Clinic, and the South S.F. Clinic.

15 N. "Colton Clinic" means the Dialysis Center of Colton, located at 1275 W.
16 "C" Street, Colton, CA 92324.

17 O. "Colton Clinic Assets" means the Colton Clinic and all Assets Associated
18 with that Clinic that are owned by DaVita, except for twenty-three (23) hemodialysis
19 machines at the Colton Clinic, which shall be leased to the Colton Partnership
20 pursuant to the Colton Clinic Divestiture Agreement.

21 P. "Colton Clinic Management Agreement" means collectively:

- 22 1. the Management Services Agreement dated August 1, 1997, between
- 23 Dialysis Center of Colton and Gambro Healthcare Renal Care, Inc., and
- 24 2. any other agreements between the Dialysis Center of Colton and Gambro
- 25 Relating To the management of the Colton Clinic by Gambro.

26 Q. "Colton Clinic Divestiture Agreement" means the the Asset Purchase
27 Agreement, Termination of Management Services Agreement, and Transition Services
28 Agreement dated September 9, 2005, by and between Dialysis Center of Colton, Dr.

1 Gerald S. Friedman, Dr. Erlinda Uy-Concepcion, Dr. M. Feroz Alam, Dr. Jin Wang
2 and Gambro Healthcare Renal Care, Inc. (The Colton Clinic Divestiture Agreement
3 is attached as Non-Public Appendix E to this Order.)

4 R. "Colton Partnership" means Dialysis Center of Colton, a California
5 general partnership, which has a principal place of business at 1275 W. "C" Street,
6 Colton, CA 92324.

7 S. "Contract Services" means services performed pursuant to any Clinic's
8 Physician Contract.

9 T. "DaVita Employee Of A Clinic To Be Divested" and "DaVita Employee
10 Of The Clinic To Be Divested" means an Employee Of A Clinic To Be Divested who
11 is employed by DaVita.

12 U. "DaVita's Medical Protocols" means medical protocols promulgated by
13 either DaVita or Gambro, whether in hard copy or embedded in software, that have
14 been in effect at any time since July 28, 2005. *PROVIDED, HOWEVER*, "DaVita's
15 Medical Protocols" does not mean medical protocols adopted or promulgated, at any
16 time, by any Physician or by any Acquirer, even if such medical protocols are
17 identical, in whole or in part, to medical protocols promulgated by either DaVita or
18 Gambro.

19 V. "Divestiture Agreement" and "Divestiture Agreements" mean the
20 Westside Clinic Divestiture Agreement, the Colton Clinic Divestiture Agreement, the
21 South S.F. Clinic Management Termination Agreement, and any agreement pursuant
22 to which DaVita divests any Appendix A Clinic Assets pursuant to this Order and with
23 the prior approval of the Attorney General.

24 W. "Effective Date" means the date on which DaVita acquires Gambro
25 Healthcare Inc..

26 X. "Employee Of A Clinic To Be Divested" and "Employee Of The Clinic
27 To Be Divested" mean any individual (including, but not limited to, a clinic director,
28 manager, nurse, technician, clerk, or social worker) who is not a Regional Manager,

1 who is employed by DaVita, by an Acquirer, or by another manager or owner of such
2 Clinic To Be Divested, and who has worked part-time or full-time on the premises of
3 such Clinic To Be Divested at any time since June 1, 2005, regardless of whether the
4 individual has also worked on the premises of any other Clinic.

5 Y. "Excluded Assets" means:

- 6 1. all cash, cash equivalents, and short term investments of cash;
- 7 2. accounts receivable;
- 8 3. income tax refunds and tax deposits due DaVita;
- 9 4. unbilled costs and fees, and Medicare bad debt recovery claims, arising
10 before a Clinic is divested to an Acquirer;

11 5. DaVita's Medical Protocols (except if requested by an Acquirer pursuant
12 to Paragraph IV.B.17.b. of this Consent Decree);

13 6. rights to the names "DaVita" and "Gambro" and any variation of those
14 names, and any names, phrases, marks, trade names, and trademarks to the extent they
15 include the following, "REN," "Total Renal Care," "Renal Treatment Centers,"
16 "Vivra," "At Your Service," "At Your Service (& Design)," "Dancing Star Logo,"
17 "DaVita At Home," "DaVita At Home (& Design)", "DaVita Clinical Research,"
18 "DaVita Laboratory Services," "DaVita Nephrology Partners," "DaVitaCare,"
19 "DaVita's Key To Better Health," "He/She Gives Life," "K.T. Family Foundation (&
20 Design)," "Kidney Education And You," "Life-Alysis," "Maxine," "Miscellaneous
21 Design (Alligator Design)," "Miscellaneous Design (Bird Design)," "Miscellaneous
22 Design (Star in Square)," "Open Access & Open Access (& Design)," "Our Village
23 Pharmacy," "Our Village Pharmacy (Design)," "Reggie," "Renal Connect," "Rising
24 Star Design," "RMS," "RMS & Design," "Snappy," "Star Rx," "Star Rx (& Design),"
25 "Star Rx Reminder," "Star Rx Reminder (& Design)," "Star/Heart Design," "Swirling
26 Star Logo," or "Where Quality of Life Meetings Quality of Care," "Gambro
27 Connections," "Gambro Connections (& Design)," "Gambro Healthcare Laboratory
28 Services," "Gambro Healthcare Patient Services," "Gambro Nephrology Partners,"

- 1 “Labscope,” “Labscope Online (& Design),” “The Patient’s Benchmark in Renal
2 Replacement Therapy,” “LSO On the Go,” “Servicelink,” “RIMS,” and “AIMS;”
3 7. insurance policies and all claims thereunder;
4 8. prepaid items or rebates;
5 9. minute books (other than governing body minute books of the Clinic To
6 Be Divested), tax returns, and other corporate books and records;
7 10. any inter-company balances due to or from DaVita or its affiliates;
8 11. all benefits plans;
9 12. all writings and other items that are protected by the attorney-client
10 privilege, the attorney work product doctrine or any other cognizable privilege or
11 protection, except to the extent such information is necessary to the Operation Of A
12 Clinic that is divested;
13 13. telecommunication systems equipment and applications, and information
14 systems equipment including, but not limited to computer hardware, not physically
15 located at a Clinic To Be Divested but shared with the Clinic To Be Divested through
16 local and/or wide area networking systems;
17 14. e-mail addresses and telephone numbers of DaVita’s employees;
18 15. Software;
19 16. computer hardware used in the Operation Of The Clinic that is (a) not
20 located at the Clinic, and (b) not otherwise to be divested pursuant to a Divestiture
21 Agreement;
22 17. all Supplier or provider numbers issued to DaVita or Gambro by a
23 Supplier or Payor with respect to any Clinic To Be Divested, except for DaVita’s
24 Medicare and Medicaid provider numbers for each Clinic To Be Divested.
25 18. rights under agreements with Payors and Suppliers that are not assignable
26 even if DaVita and Gambro approve such assignment;
27 19. office equipment and furniture that (a) is not, in the Ordinary Course Of
28 Business, physically located at the Clinic To Be Divested, (b) is shared with Clinics

SCANNED

SCANNED

1 other than the Clinic To Be Divested, and (c) is not necessary to the Operation Of The
2 Clinic To Be Divested.

3 20. Licensed Intangible Property; and

4 21. strategic planning documents that

5 a. relate to the Operation Of The Clinic other than the Clinic To Be
6 Divested, and

7 b. are not located on the premises of the Clinic To Be Divested.

8 Z. "Governmental Approvals" means any permissions or sanctions issued
9 by any government or governmental organization, including, but not limited to,
10 licenses, permits, accreditations, authorizations, registrations, certifications,
11 certificates of occupancy, and certificates of need.

12 AA. "Government Approvals For Continued Operation" means any
13 Governmental Approvals, other than Government Approvals For Divestiture, that an
14 Acquirer must have to continue to operate a Clinic To Be Divested.

15 BB. "Governmental Approvals For Divestiture" means any Governmental
16 Approvals that an Acquirer must have to own, and to initially operate, a Clinic To Be
17 Divested, including, but not limited to, state-issued licenses and state-issued
18 certificates of need.

19 CC. "Intangible Property" means intangible property Relating To the
20 Operation Of A Clinic To Be Divested including, but not limited to, intellectual
21 property, software, computer programs, patents, know-how, goodwill, technology,
22 trade secrets, technical information, marketing information, protocols, quality control
23 information, trademarks, trade names, service marks, logos, and the modifications or
24 improvements to such intangible property.

25 DD. "Lease Of The Owned Real Property" means the Lease Agreement dated
26 September 12, 2005, between Gambro Healthcare, Inc. and RAI Care Centers of
27 Northern California I, LLC for space located at 218 Harding Boulevard, Roseville,
28 California 95678; (This Lease Of The Owned Real Property is included with the Renal

1 Advantage Divestiture Agreements, which are attached as Non-Public Appendix D to
2 this Consent Decree.)

3 EE. "Licensed Intangible Property" means intangible property licensed to
4 DaVita from a third party Relating To the Operation Of A Clinic To Be Divested
5 including, but not limited to, intellectual property, software, computer programs,
6 patents, know-how, goodwill, technology, trade secrets, technical information,
7 marketing information, protocols, quality control information, trademarks, trade
8 names, service marks, logos, and the modifications or improvements to such intangible
9 property that are licensed to DaVita. ("Licensed Intangible Property" does not mean
10 modifications and improvements to intangible property that are not licensed to
11 DaVita.)

12 FF. "Management Agreement" and "Management Agreements" mean the
13 South S.F. Clinic Management Agreement and the Colton Clinic Management
14 Agreement.

15 GG. "Material Confidential Information" means competitively sensitive,
16 proprietary, and all other information that is not in the public domain owned by or
17 pertaining to a Person or a Person's business, and includes, but is not limited to, all
18 customer lists, price lists, contracts, cost information, marketing methods, patents,
19 technologies, processes, or other trade secrets.

20 HH. "Monitor Agreement" means the Monitor Agreement dated September
21 12, 2005, between DaVita Inc., and John Strack and Mitch S. Nielson of Focal Point
22 Medical Consulting Group. (The Monitor Agreement is attached as Appendix C to
23 this Consent Decree.) Confidential Exhibits A and B to the Monitor Agreement shall
24 be lodged with the Court under seal and the kept confidential based on the
25 representations of defendants and the chosen Monitors that these Exhibits contain
26 trade secrets and commercial information of defendants and the Monitors. Concurrent
27 with the filing of the Complaint herein, the parties have entered into a Protective Order
28 filed concurrently herein.

1 II. "Operation Of A Clinic" and "Operation Of The Clinic" mean all
2 activities Relating To the business of a Clinic, including, but not limited to:

- 3 1. attracting patients to the Clinic for dialysis services, providing dialysis
4 services to patients of the Clinic, and dealing with their Physicians, including, but not
5 limited to, services Relating To hemodialysis and peritoneal dialysis;
6 2. providing medical products to patients of the Clinic;
7 3. maintaining the equipment on the premises of the Clinic, including, but
8 not limited to, the equipment used in providing dialysis services to patients;
9 4. purchasing supplies and equipment for the Clinic;
10 5. negotiating leases for the premises of the Clinic;
11 6. providing counseling and support services to patients receiving products
12 or services from the Clinic;
13 7. contracting for the services of medical directors for the Clinic;
14 8. dealing with Payors that pay for products or services offered by the
15 Clinic, including but not limited to, negotiating contracts with such Payors and
16 submitting claims to such Payors; and
17 9. dealing with Governmental Approvals Relating To the Clinic or that
18 otherwise regulate the Clinic.

19 JJ. "Ordinary Course Of Business" means actions taken by any Person in the
20 ordinary course of the normal day-to-day Operation Of The Clinic that is consistent
21 with past practices of such Person in the Operation Of The Clinic, including, but not
22 limited to past practice with respect to amount, timing, and frequency.

23 KK. "Other Contracts Of Each Clinic To Be Divested" means all contracts
24 Relating To the Operation Of A Clinic, where such Clinic is a Clinic To Be Divested
25 – including, but not limited to, contracts for goods and services provided to the Clinic
26 and contracts with Payors – but does not mean the Clinic's Physician Contracts and
27 the leases for the Real Property Of The Clinic.

28 LL. "Owned Real Property" means the Real Property Of The Clinic at the

1 Roseville Dialysis Center, located at 218 Harding Boulevard, Roseville, CA 95678;

2 MM. "Payor" means any Person that purchases, reimburses for, or otherwise
3 pays for medical goods or services for themselves or for any other person, including,
4 but not limited to: health insurance companies; preferred provider organizations; point
5 of service organizations; prepaid hospital, medical, or other health service plans;
6 health maintenance organizations; government health benefits programs; employers
7 or other persons providing or administering self-insured health benefits programs; and
8 patients who purchase medical goods or services for themselves.

9 NN. "Peninsula Nephrology" means Peninsula Nephrology, Inc., a California
10 corporation with a principal place of business at 2000 South El Camino Real, San
11 Mateo, CA 94403-1805.

12 OO. "Person" means any natural person, partnership, corporation, association,
13 trust, joint venture, government, government agency, or other business or legal entity.

14 PP. "Physician" means a doctor of allopathic medicine ("M.D.") or a doctor
15 of osteopathic medicine ("D.O.").

16 QQ. "Real Property Of The Clinic" means real property on which, or in which,
17 the Clinic is located, including real property used for parking and for other functions
18 Relating To the Operation Of The Clinic.

19 RR. "Relating To" means pertaining in any way to, and is not limited to that
20 which pertains exclusively to or primarily to.

21 SS. "Regional Manager" means any individual who has been employed by
22 DaVita or Gambro with supervisory responsibility for three or more Clinics.

23 TT. "Regional Manager Of A Clinic To Be Divested" and "Regional Manager
24 Of The Clinic To Be Divested" mean a Regional Manager who has had direct
25 supervisory responsibility for a Clinic To Be Divested at any time since June 1, 2005.

26 UU. "Renal Advantage" means Renal Advantage Inc., a Delaware corporation
27 with a principal place of business at 115 East Park Drive, Suite 300, Brentwood, TN
28 37027.

1 VV. "Renal Advantage Divestiture Agreements" means the following
2 agreements:

- 3 1. the Amended and Restated Asset Purchase Agreement dated September
4 12, 2005 by and among Renal Advantage Inc., Gambro Healthcare, Inc., and DaVita
5 Inc.,
6 2. the Transition Services Agreement dated September 12, 2005 between
7 Renal Advantage Inc. and DaVita Inc; and
8 3. the Leases Of The Owned Real Property.

9 (The Renal Advantage Divestiture Agreements are attached as Non-Public
10 Appendix D to this Consent Decree.)

11 WW. "Software" means executable computer code and the documentation for
12 such computer code, but does not mean data processed by such computer code.

13 XX. "South S.F. Clinic" means the South San Francisco Dialysis Center
14 located at 205 Kenwood Way, South San Francisco, CA 94080.

15 YY. "South S.F. Clinic Management Agreement" means collectively:

- 16 1. the Amended and Restated Agreement to Provide Management Services
17 to Kidney Dialysis Facilities dated August 31, 1998, between Total Renal Care
18 Holdings, Inc., and Peninsula Nephrology, Inc., and
19 2. any other agreements between DaVita and Peninsula Nephrology Relating
20 To the management of the South S.F. Clinic by DaVita.

21 ZZ. "South S.F. Clinic Management Termination Agreement" means the
22 Termination of Management Services Agreement and Transition Services Agreement,
23 dated September 12, 2005, between Davita Inc. and Peninsula Nephrology, Inc. (The
24 South S.F. Clinic Management Termination Agreement is attached as Non-Public
25 Appendix G to this Consent Decree.)

26 AAA. "Supplier" means any Person that has sold to DaVita or Gambro any
27 goods or services, other than Physician services, for use in a Clinic To Be Divested.
28 *PROVIDED, HOWEVER*, "Supplier" does not mean an employee of DaVita or

1 Gambro.

2 BBB. "Time Of Divestiture" means:

3 1. with respect to the Appendix A Clinics and the Westside Clinic, the date
4 upon which a Clinic is divested to an Acquirer pursuant to this Consent Decree, and

5 2. with respect to the Colton Clinic and the South S.F. Clinic, the date upon
6 which a Management Agreement for the Clinic is terminated pursuant to this Consent
7 Decree.

8 CCC. "Westside Clinic" means the Gambro Westside Clinic located at 300 S.
9 Robertson Blvd., Los Angeles, CA 90048.

10 DDD. "Westside Clinic Acquirer" means 300 S. Robertson Dialysis, LLC, a
11 California limited liability company with a principal place of business at 1 World
12 Trade Center, Suite 2500, Long Beach, CA 90831.

13 EEE. "Westside Clinic Divestiture Agreement" means the Asset Purchase
14 Agreement dated September 10, 2005, by and among Gambro Healthcare, Inc. and 300
15 S. Robertson Dialysis, LLC, Stuart Friedman, M.D., Donald Nortman, M.D., Franklin
16 Strauss, M.D., Larry Jones, Allen Fulmer, Jerry L. Green, Doris Holmes, R.N., and,
17 with respect to certain sections of the agreement, Innovative Dialysis Systems, Inc.
18 (The Westside Clinic Divestiture Agreement is attached as Non-Public Appendix E
19 to this Consent Decree.)

20 FFF. "Westside Clinic Assets" means the Westside Clinic and all Assets
21 Associated with that Clinic.

22 III.

23 APPLICABILITY

24 A. The provisions of this Consent Decree apply to the Defendants, their
25 successors and assigns, their subsidiaries, affiliates, directors, officers, managers,
26 agents, and employees, and all other persons in active concert or participation with any
27 of them who have received actual notice of this Consent Decree Decree by personal
28 service or otherwise.

1 B. Nothing herein shall suggest that any portion of this Consent Decree is
2 or has been created for the benefit of any third party and nothing herein shall be
3 construed to provide any rights to third parties.

4 IV.

5 DIVESTITURE OF ASSETS

6 On the condition that DaVita and Gambro consummate the Merger and that the
7 Attorney General has not withdrawn its acceptance of the Consent Decree, that:

8 A. DaVita shall divest the Assets To Be Divested and shall terminate the
9 Management Agreements, as follows:

10 1. DaVita shall:

- 11 a. within ten (10) days after the Effective Date, divest to Renal
12 Advantage, absolutely, and in good faith, pursuant to and in
13 accordance with the Renal Advantage Divestiture Agreements, all
14 the Appendix A Clinic Assets;
- 15 b. The Renal Advantage Divestiture Agreements are incorporated by
16 reference into this Consent Decree and made a part hereof as
17 Non-Public Appendix D. Any failure by DaVita to comply with
18 the Renal Advantage Divestiture Agreements shall constitute a
19 failure to comply with the Consent Decree. The Renal Advantage
20 Divestiture Agreements shall not vary or contradict, or be
21 construed to vary or contradict, the terms of this Consent Decree.
22 Nothing in this Consent Decree shall reduce, or be construed to
23 reduce, any rights or benefits of Renal Advantage, or any
24 obligations of DaVita, under the Renal Advantage Divestiture
25 Agreements.

26 PROVIDED, HOWEVER, if, the Commission determines that Renal Advantage
27 is not an acceptable acquirer or that the Renal Advantage Divestiture Agreements are
28 not an acceptable manner of divestiture, and so notifies DaVita, then DaVita shall:

- 1 i. Consent to immediate entry of an amended Consent Decree
2 before this Court, and if necessary, an Amended Asset
3 Maintenance Agreement, and such other pleadings as
4 warranted. These amended pleadings shall solely reflect the
5 change of circumstances, unless otherwise agreed by the
6 parties in writing; and
- 7 ii. Rescind the Renal Advantage Divestiture Agreements;
- 8 iii. Divest, within six (6) months of the date of Entry of the
9 Amended Consent Decree, the Appendix A Clinic Assets,
10 absolutely and in good faith, at no minimum price, as on-
11 going businesses to an Acquirer or Acquirers that receive
12 the prior approval of the Attorney General and only in a
13 manner that receives the prior approval of the Attorney
14 General, and is authorized by this Court.

15 2. Within ten (10) days after the Effective Date, DaVita shall divest to the
16 Westside Clinic Acquirer, absolutely, and in good faith, pursuant to and in accordance
17 with the Westside Clinic Divestiture Agreement, the Westside Clinic Assets as an on-
18 going business. The Westside Clinic Divestiture Agreement is incorporated by
19 reference into this Consent Decree and made a part hereof as Non-Public Appendix
20 E. Any failure by DaVita to comply with the Westside Clinic Divestiture Agreement
21 shall constitute a failure to comply with the Consent Decree. The Westside Clinic
22 Divestiture Agreement shall not vary or contradict, or be construed to vary or
23 contradict, the terms of this Consent Decree. Nothing in this Consent Decree shall
24 reduce, or be construed to reduce, any rights or benefits of the Westside Clinic
25 Acquirer, or any obligations of DaVita, under the Westside Clinic Divestiture
26 Agreement.

27 3. Within ten (10) days after the Effective Date, pursuant to and in
28 accordance with the Colton Clinic Divestiture Agreement, DaVita shall:

- 1 a. terminate the Colton Clinic Management Agreement, thereby
2 transferring management of the Colton Clinic to the Colton
3 Partnership, and
4 b. divest to the Colton Partnership, absolutely, and in good faith, the
5 Colton Clinic Assets as an on-going business.

6 The Colton Clinic Divestiture Agreement is incorporated by
7 reference into this Consent Decree and made a part hereof as Non-Public Appendix
8 F. Any failure by DaVita to comply with the Colton Clinic Divestiture Agreement
9 shall constitute a failure to comply with the Consent Decree. The Colton Clinic
10 Divestiture Agreement shall not vary or contradict, or be construed to vary or
11 contradict, the terms of this Consent Decree. Nothing in this Consent Decree shall
12 reduce, or be construed to reduce, any rights or benefits of the Colton Partnership, or
13 any obligations of DaVita, under the Colton Clinic Divestiture Agreement.

14 4. Within ten (10) days after the Effective Date, pursuant to and in
15 accordance with the South S.F. Clinic Management Termination Agreement, DaVita
16 shall terminate the South S.F. Clinic Management Agreement, thereby transferring
17 management of the South S.F. Clinic to Peninsula Nephrology. The South S.F. Clinic
18 Management Termination Agreement is incorporated by reference into this Consent
19 Decree and made a part hereof as Non-Public Appendix G. Any failure by DaVita to
20 comply with the South S.F. Clinic Management Termination Agreement shall
21 constitute a failure to comply with the Consent Decree. The South S.F. Clinic
22 Management Termination Agreement shall not vary or contradict, or be construed to
23 vary or contradict, the terms of this Consent Decree. Nothing in this Consent Decree
24 shall reduce, or be construed to reduce, any rights or benefits of Peninsula
25 Nephrology, or any obligations of DaVita, under the South S.F. Clinic Management
26 Termination Agreement.

27 5. No later than one hundred twenty (120) days after the date the Consent
28 Decree is signed, Respondent shall divest absolutely, in good faith, and in a manner

1 that receives the prior approval of the Attorney General, the Owned Real Property to
2 an Acquirer or Acquirers that receive the prior approval of the Attorney General.
3 DaVita shall place no restrictions, other than the restrictions imposed by the Leases
4 Of The Owned Real Property, on the use of the Owned Real Property by such Acquirer
5 or Acquirers.

6 B. DaVita shall divest the Assets To Be Divested, and terminate the
7 Management Agreements, on the terms set forth in this Paragraph IV.B., in addition
8 to other terms that may be required by this Consent Decree and by the Divestiture
9 Agreements; and DaVita shall agree with the Acquirers, as part of the Divestiture
10 Agreements, to comply with the terms set forth in this Paragraph IV.B.; *PROVIDED*,
11 *HOWEVER*, this Paragraph IV.B. does not apply to the Owned Real Property or to the
12 Acquirers of the Owned Real Property:

13 1. DaVita shall place no restrictions on the use by any Acquirer of any of
14 the Assets To Be Divested or any of the Clinics To Be Divested.

15 2. DaVita shall cooperate with the Acquirer and assist the Acquirer, at no
16 cost to the Acquirer, at the Time Of Divestiture of each Clinic To Be Divested, in
17 obtaining all Government Approvals For Divestiture, and all Government Approvals
18 For Continued Operation, for each Clinic To Be Divested; *PROVIDED, HOWEVER*,
19 this Paragraph IV.B.2 does not apply to the South S.F. Clinic, to the Assets Associated
20 with that Clinic, or to the Acquirer of that Clinic.

21 3. DaVita shall, at the Time Of Divestiture of each Clinic To Be Divested:
22 a. assign to the Acquirer all rights, title, and interest to leases for the
23 Real Property Of The Clinic, and shall obtain all approvals
24 necessary for such assignments; *PROVIDED, HOWEVER*, that (1)
25 if the Acquirer obtains all rights, title, and interest to a lease for
26 Real Property Of A Clinic To Be Divested before the Assets To Be
27 Divested are divested pursuant to Paragraph IV.A. of this Consent
28 Decree, and (2) the Acquirer certifies its receipt of such lease and

1 attaches it as part of the Divestiture Agreement, then DaVita shall
2 not be required to make the assignments for such Clinic To Be
3 Divested as required by this Paragraph; *PROVIDED, FURTHER,*
4 *HOWEVER,* this Paragraph IV.B.3.a. does not apply to the Colton
5 Clinic and the South S.F. Clinic, to the Assets Associated with
6 those Clinics, or to the Acquirers of those Clinics; and

7 b. assign to the Acquirer all of the Clinic's Physician Contracts, and
8 shall obtain all approvals necessary for such assignment;
9 *PROVIDED, HOWEVER,* that (1) if the Acquirer enters into a
10 Clinic's Physician Contract for a Clinic To Be Divested before the
11 Assets To Be Divested are divested pursuant to Paragraph IV.A.
12 of this Consent Decree , and (2) the Acquirer certifies its receipt
13 of such contract and attaches it as part of the Divestiture
14 Agreement, then DaVita shall not be required to make the
15 assignment for such Clinic To Be Divested as required by this
16 Paragraph; *PROVIDED, FURTHER, HOWEVER,* this Paragraph
17 IV.B.3.b. does not apply to the Colton Clinic, the South S.F.
18 Clinic, and the Westside Clinic, to the Assets Associated with
19 those Clinics, or to the Acquirers of those Clinics.

20 4. With respect to all Other Contracts Of Each Clinic To Be Divested,
21 DaVita shall, at the Acquirer's option and at the Time Of Divestiture of each Clinic
22 To Be Divested:

23 a. if such contract can be assigned without third party approval,
24 assign its rights under the contract to the Acquirer; and

25 b. if such contract can be assigned to the Acquirer only with third
26 party approval, assist and cooperate with the Acquirer in
27 obtaining:

28 (1) such third party approval and in assigning the contract

1 to the Acquirer; or

2 (2) a new contract.

3 5. DaVita shall:

4 a. at the Time Of Divestiture of each Clinic To Be Divested, provide
5 to the Acquirer of such Clinic contact information about Payors
6 and Suppliers for the Clinic, and

7 b. not object to the sharing of Payor and Supplier contract terms
8 Relating To the Clinics To Be Divested: (i) if the Payor or
9 Supplier consents in writing to such disclosure upon a request by
10 the Acquirer, and (ii) if the Acquirer enters into a confidentiality
11 agreement with DaVita not to disclose the information to any third
12 party;

13 *PROVIDED, HOWEVER*, this Paragraph IV.B.5. does not apply to
14 the South S.F. Clinic, to the Assets Associated with that Clinic, or to the Acquirer of
15 that Clinic.

16 6. Until sixty (60) days after the Time Of Divestiture of each Clinic To Be
17 Divested, DaVita shall:

18 a. facilitate interviews between each DaVita Employee Of A Clinic
19 To Be Divested and the Acquirer of the Clinic, and shall not
20 discourage such employee from participating in such interviews;
21 and

22 b. not interfere in employment negotiations between each DaVita
23 Employee Of A Clinic To Be Divested and the Acquirer of the
24 Clinic;

25 *PROVIDED, HOWEVER*, this Paragraph IV.B.6. does not apply to
26 the South S.F. Clinic, to the Assets Associated with that Clinic, or to the Acquirer of
27 that Clinic.

28 7. With respect to each DaVita Employee Of A Clinic To Be Divested who

SCANNED

1 receives, within sixty (60) days of the Time Of Divestiture of any Clinic at which he
2 or she is employed, an offer of employment from the Acquirer of that Clinic, DaVita
3 shall do the following:

- 4 a. DaVita shall not prevent, prohibit or restrict or threaten to prevent,
5 prohibit or restrict the DaVita Employee Of The Clinic To Be
6 Divested from being employed by the Acquirer of the Clinic, and
7 shall not offer any incentive to the DaVita Employee Of The
8 Clinic To Be Divested to decline employment with the Acquirer
9 of the Clinic;
- 10 b. if the DaVita Employee Of The Clinic To Be Divested accepts
11 such offer of employment from the Acquirer, DaVita shall
12 cooperate with the Acquirer of the Clinic in effecting transfer of
13 the DaVita Employee Of The Clinic To Be Divested to the employ
14 of the Acquirer of the Clinic;
- 15 c. DaVita shall eliminate any contractual provisions or other
16 restrictions that would otherwise prevent the DaVita Employee Of
17 The Clinic To Be Divested from being employed by the Acquirer
18 of the Clinic;
- 19 d. DaVita shall eliminate any confidentiality restrictions that would
20 prevent the DaVita Employee Of The Clinic To Be Divested who
21 accepts employment with the Acquirer of the Clinic from using or
22 transferring to the Acquirer any information Relating To the
23 Operation Of The Clinic;
- 24 e. DaVita shall pay, for the benefit of any DaVita Employee Of The
25 Clinic To Be Divested who accepts employment with the Acquirer
26 of the Clinic, all accrued bonuses, vested pensions and other
27 accrued benefits; and

28 *PROVIDED, HOWEVER*, this Paragraph IV.B.7. does not apply to

1 the South S.F. Clinic, to the Assets Associated with that Clinic, or to the Acquirer of
2 that Clinic.

3 8. For a period of two (2) years following the Time Of Divestiture of each
4 Clinic To Be Divested, DaVita shall not, directly or indirectly, solicit, induce, or
5 attempt to solicit or induce any Employee Of A Clinic To Be Divested who is
6 employed by the Acquirer to terminate his or her employment relationship with the
7 Acquirer, unless that employment relationship has already been terminated by the
8 Acquirer; *PROVIDED, HOWEVER*, DaVita may make general advertisements for
9 employees including, but not limited to, in newspapers, trade publications, websites,
10 or other media not targeted specifically at Acquirer's employees; *PROVIDED*,
11 *FURTHER, HOWEVER*, DaVita may hire employees who apply for employment with
12 DaVita, as long as such employees were not solicited by DaVita in violation of this
13 Paragraph IV.B.8.; *PROVIDED, FURTHER, HOWEVER*, DaVita may offer
14 employment to an Employee Of A Clinic To Be Divested who is employed by the
15 Acquirer in only a part-time capacity, if the employment offered by DaVita would not,
16 in any way, interfere with the employee's ability to fulfill his or her employment
17 responsibilities to the Acquirer.

18 9. For a period of not less than forty-five (45) days, which period may begin
19 prior to the signing of the Consent Agreement and which shall end no earlier than ten
20 (10) days after the Time Of Divestiture of each Clinic To Be Divested ("Forty-Five
21 Day Hiring Period"), DaVita shall:

- 22 a. facilitate interviews between each Regional Manager Of A Clinic
23 To Be Divested and the Acquirer of the Clinic, and shall not
24 discourage such Regional Manager from participating in such
25 interviews; and
26 b. not interfere in employment negotiations between each Regional
27 Manager Of A Clinic To Be Divested and the Acquirer of the
28 Clinic;

1 *PROVIDED, HOWEVER*, the terms of this Paragraph IV.B.9. shall
2 not apply after Acquirers have hired six (6) Regional Managers who were each
3 previously employed by DaVita or Gambro at any time since June 1, 2005;
4 *PROVIDED, FURTHER, HOWEVER*, the terms of this Paragraph IV.B.9. shall not
5 apply to the Westside Clinic, the Colton Clinic, and the South S.F. Clinic, to the
6 Assets Associated with those Clinics, or to the Acquirers of those Clinics.

7 10. With respect to each Regional Manager Of A Clinic To Be Divested who
8 receives, within the Forty-Five Day Hiring Period required by Paragraph IV.B.9 of this
9 Consent Decree an offer of employment from the Acquirer of that Clinic, DaVita shall
10 do the following:

- 11 a. DaVita shall not prevent, prohibit or restrict or threaten to prevent,
12 prohibit or restrict the Regional Manager Of The Clinic To Be
13 Divested from being employed by the Acquirer of the Clinic, and
14 shall not offer any incentive to the Regional Manager Of The
15 Clinic To Be Divested to decline employment with the Acquirer
16 of the Clinic;
- 17 b. if the Regional Manager Of The Clinic To Be Divested accepts
18 such offer of employment from the Acquirer, DaVita shall
19 cooperate with the Acquirer of the Clinic in effecting transfer of
20 the Regional Manager Of The Clinic To Be Divested to the
21 employ of the Acquirer of the Clinic;
- 22 c. DaVita shall eliminate any contractual provisions or other
23 restrictions that would otherwise prevent the Regional Manager Of
24 The Clinic To Be Divested from being employed by the Acquirer
25 of the Clinic;
- 26 d. DaVita shall eliminate any confidentiality restrictions that would
27 prevent the Regional Manager Of The Clinic To Be Divested who
28 accepts employment with the Acquirer of the Clinic from using or

SCANNED

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

transferring to the Acquirer any information Relating To the Operation Of The Clinic;

e. DaVita shall pay, for the benefit of any Regional Manager Of The Clinic To Be Divested who accepts employment with the Acquirer of the Clinic, all accrued bonuses, vested pensions and other accrued benefits;

f. for a period of two (2) years following the Time Of Divestiture of the Clinic To Be Divested, DaVita shall not, directly or indirectly, solicit, induce, or attempt to solicit or induce any Regional Manager of the Acquirer who was previously a Regional Manager of A Clinic To Be Divested to terminate his or her employment relationship with the Acquirer unless the individual has been terminated by the Acquirer; *PROVIDED, HOWEVER*, DaVita may make general advertisements for Regional Managers including, but not limited to, in newspapers, trade publications, websites, or other media not targeted specifically at Acquirer's Regional Managers; *PROVIDED, FURTHER, HOWEVER*, DaVita may hire Regional Managers who apply for employment with DaVita, as long as such Regional Managers were not solicited by DaVita in violation of this Paragraph IV.B.10.f.;

PROVIDED, HOWEVER, after Acquirers have hired six (6) Regional Managers who were each previously employed by DaVita or Gambro at any time since June 1, 2005, the terms of Paragraph IV.B.10. shall apply only to those six (6) Regional Managers hired by the Acquirers; *PROVIDED, FURTHER, HOWEVER*, the terms of this Paragraph IV.B.10. shall not apply to the Westside Clinic, the Colton Clinic, and the South S.F. Clinic, to the Assets Associated with those Clinics, or to the Acquirers of those Clinics.

11. With respect to each Physician who has provided services to a Clinic To

1 Be Divested pursuant to any of the Clinic's Physician Contracts in effect at any time
2 during the four (4) months preceding the Time Of Divestiture of the Clinic ("Contract
3 Physician"):

4 a. DaVita shall not offer any incentive to the Contract Physician, the
5 Contract Physician's practice group, or other members of the
6 Contract Physician's practice group to decline to provide services
7 to the Clinic To Be Divested, and shall eliminate any
8 confidentiality restrictions that would prevent the Contract
9 Physician, the Contract Physician's practice group, or other
10 members of the Contract Physician's practice group from using or
11 transferring to the Acquirer of the Clinic To Be Divested any
12 information Relating To the Operation Of The Clinic;
13 *PROVIDED, HOWEVER*, this Paragraph IV.B.11.a. does not apply
14 to the South S.F. Clinic, to the Assets Associated with that Clinic,
15 or to the Acquirer of that Clinic; and

16 b. For a period of three (3) years following the Time Of Divestiture
17 of each Clinic To Be Divested, DaVita shall not contract for the
18 services of the Contract Physician, the Contract Physician's
19 practice group, or other members of the Contract Physician's
20 practice group for the provision of Contract Services to be
21 performed in any of the areas listed in Appendix B of this Consent
22 Decree that correspond to such Clinic. *PROVIDED, HOWEVER*,
23 if the Contract Physician, or the Contract Physician's practice
24 group, or other members of the Contract Physician's practice
25 group were providing services to a Clinic pursuant to a contract
26 with DaVita or Gambro in effect as of June 1, 2005, then DaVita
27 may contract with such Contract Physicians, or the Contract
28 Physician's practice group, or other members of the Contract

1 Physician's practice group for services to be provided to that
2 particular Clinic; *PROVIDED, FURTHER, HOWEVER*, the terms
3 of this Paragraph IV.B.11.b. shall not apply to the Westside Clinic,
4 the Colton Clinic, and the South S.F. Clinic, to the Assets
5 Associated with those Clinics, or to the Acquirers of those Clinics;

6 12. With respect to Material Confidential Information relating exclusively to
7 any of the Clinics To Be Divested, DaVita shall:

8 a. not disclose such information to any Person other than the
9 Acquirer of such Clinic;

10 b. after the Time Of Divestiture of such Clinic:

11 (1) not use such information for any purpose other than
12 complying with the terms of this Consent Decree or with any law; and

13 (2) destroy all records of such information, except to the extent
14 that: (1) DaVita is required by law to retain such information, and (2) DaVita's inside
15 or outside attorneys may keep one copy solely for archival purposes, but may not
16 disclose such copy to the rest of DaVita.

17 13. At the Time Of Divestiture of each Clinic To Be Divested, DaVita shall
18 provide the Acquirer of the Clinic with manuals, instructions, and specifications
19 sufficient for the Acquirer to access and use any information:

20 a. divested to the Acquirer pursuant to this Consent Decree, or

21 b. in the possession of the Acquirer, and previously used by DaVita
22 or Gambro in the Operation Of The Clinic.

23 14. For two (2) years following the Time Of Divestiture of each Clinic To
24 Be Divested, DaVita shall not solicit the business of any patients that received any
25 goods or services from such Clinic between May 1, 2005, and the date of such
26 divestiture, *PROVIDED, HOWEVER*, DaVita may (i) make general advertisements for
27 the business of such patients including, but not limited to, in newspapers, trade
28 publications, websites, or other media not targeted specifically at such patients, and

1 (ii) provide advertising and promotions directly to any patient that initiates discussions
2 with, or makes a request to, any DaVita employee.

3 15. DaVita shall convey to each Acquirer of a Clinic To Be Divested the right
4 to use any Licensed Intangible Property (to the extent permitted by the third-party
5 licensor), if such right is needed for the Operation Of The Clinic by the Acquirer and
6 if the Acquirer is unable, using commercially reasonable efforts, to obtain equivalent
7 rights from other third parties on commercially reasonable terms and conditions.

8 16. DaVita shall do nothing to prevent or discourage Suppliers that, prior to
9 the Time Of Divestiture of any Clinic To Be Divested, supplied goods and services for
10 use in any Clinic To Be Divested from continuing to supply goods and services for use
11 in such Clinic.

12 17. With respect to DaVita's Medical Protocols:

- 13 a. DaVita shall retain a copy of DaVita's Medical Protocols until six
14 (6) months after all of the Assets To Be Divested have been
15 divested, and the Colton Clinic Management Agreement has been
16 terminated, pursuant to this Consent Decree;
- 17 b. If any Acquirer of a Clinic To Be Divested requests in writing to
18 DaVita, within six (6) months of the Time Of Divestiture of that
19 Clinic to that Acquirer, that DaVita license a copy of DaVita's
20 Medical Protocols to that Acquirer, DaVita shall within five (5)
21 business days of such request, grant to that Acquirer a royalty-free
22 perpetual worldwide license for the use, without any limitation, of
23 DaVita's Medical Protocols (including the right to transfer or
24 sublicense such protocols, exclusively or nonexclusively, to others
25 by any means); and
- 26 c. DaVita shall create no disincentive for any Acquirer of a Clinic To
27 Be Divested to make such a request for a license for DaVita's
28 Medical Protocols, and shall not enter into any agreement or

1 understanding with any Acquirer that the Acquirer not make such
2 a request.

3 *PROVIDED, HOWEVER*, this Paragraph IV.B.17. does not apply
4 to the South S.F. Clinic, to the Assets Associated with that Clinic, or to the Acquirer
5 of that Clinic.

6 C. DaVita shall not acquire Gambro Healthcare Inc. until it has obtained for
7 all Clinics To Be Divested:

8 1. all Governmental Approvals For Divestiture necessary for the Acquirers
9 of such Clinics to be able to own, and initially operate, the Clinics;

10 2. all approvals for assignment of the leases for the Real Property Of The
11 Clinics, as required by to Paragraph IV.B.3.a. of this Consent Decree; and

12 3. all approvals for the assignment of the Clinic's Physician Contracts, as
13 required by Paragraph IV.B.3.b. of this Consent Decree. (Copies of all such approvals
14 shall be incorporated into the Divestiture Agreements as appendices.)

15 D. The purpose of Paragraph IV. of this Consent Decree is to ensure the
16 continuation of the Clinics To Be Divested as, or as part of, ongoing viable enterprises
17 engaged in the same business in which such assets were engaged at the time of the
18 announcement of the acquisition by DaVita Inc. of Gambro Healthcare Inc., to ensure
19 that the Clinics To Be Divested are operated independently of, and in competition
20 with, DaVita, and to remedy the lessening of competition alleged in the Attorney
21 General's Complaint.

22 V.

23 REPORTING REQUIREMENTS

24 IT IS FURTHER ORDERED that for a period of five (5) years from the date
25 this Consent Decree is issued, DaVita shall not, without providing advance written
26 notification to the Attorney General in the manner described in this paragraph, directly
27 or indirectly:

28 A. acquire any assets of, or financial interest in any Clinic located in any of

1 the areas of California, listed in Appendix B of this Consent Decree; or

2 B. enter into any contract to participate in the management or Operation Of
3 A Clinic located in any of the areas of California listed in Appendix B of this Consent
4 Decree, except to the extent that the contract relates exclusively to:

5 1. off-site lab services or social worker support materials; or

6 2. billing services, collection services, bookkeeping services, accounting
7 services, supply purchasing and logistics services, or the preparation of financial
8 reports and accounts receivable reports (collectively "Such Services"), where
9 appropriate firewalls and confidentiality agreements are implemented to prevent
10 Material Confidential Information of the Clinic from being disclosed to anyone
11 participating in any way in the operation or management of any Clinic owned by
12 DaVita or any Clinic to which Such Services are being provided.

13

14 The advance written notification shall contain (i) either a detailed term sheet for the
15 proposed acquisition or the proposed agreement with all of the attachments, and (ii)
16 documents that would be responsive to Item 4(c) under the Premerger Notification
17 and Report Form under the Hart-Scott-Rodino Premerger Notification Act, Section
18 7A of the Clayton Act, 15 USC § 18a, Relating To the proposed transaction
19 (hereinafter referred to as "the Notification"),

20

21 PROVIDED HOWEVER, (i) the Notification is required from DaVita and not from
22 any other party to the transaction. DaVita shall provide the Notification to the
23 Attorney General at least thirty (30) days prior to consummating the transaction
24 (hereinafter referred to as "first waiting period"). If, within the first waiting period,
25 the Attorney General makes a written request for additional information or
26 documentary material, DaVita shall not consummate the transaction until thirty (30)
27 days after submitting the additional information or documentary material. Early
28 termination of the waiting periods in this paragraph may be requested and, where

1 appropriate, granted by letter from the Attorney General.

2 VI.

3 APPOINTMENT OF MONITOR

4 IT IS FURTHER ORDERED that:

5 A. John Strack and Mitch S. Nielson, CPA, of Focal Point Medical
6 Consulting Group, have consented to act as Monitors in this case and are hereby
7 appointed Monitors to assure that DaVita expeditiously complies with all of its
8 obligations and perform all of its responsibilities as required by this Consent Decree.

9 B. No later than one (1) day after this Consent Decree is made final, DaVita
10 shall, pursuant to the Monitor Agreement and to this Consent Decree, transfer to the
11 Monitors all the rights, powers, and authorities necessary to permit the Monitors to
12 perform their duties and responsibilities in a manner consistent with the purposes of
13 this Consent Decree.

14 C. In the event a substitute Monitor is required, DaVita stipulates to the
15 entry of an Order appointing a substitute Monitor. The Attorney General shall
16 nominate a new Monitor for appointment, subject to the consent of DaVita, which
17 consent shall not be unreasonably withheld. If DaVita has not opposed, in writing,
18 including the reasons for opposing, the selection of a proposed Monitor within ten (10)
19 days after notice by the staff of the Attorney General to DaVita of the identity of any
20 proposed Monitor, DaVita shall be deemed to have consented to the selection of the
21 proposed Monitor. Not later than ten (10) days after appointment of a substitute
22 Monitor, DaVita shall execute an agreement that, subject to the prior approval of the
23 Attorney General, confers on the Monitor all the rights and powers necessary to permit
24 the Monitors to monitor DaVita's compliance with the terms of this Consent Decree,
25 the Order to Maintain Assets, and the Divestiture Agreements in a manner consistent
26 with the purposes of this Consent Decree.

27 D. DaVita shall consent to the following terms and conditions regarding the
28 powers, duties, authorities, and responsibilities of the Monitors:

ENTERED

1 1. The Monitors shall have the power and authority to monitor DaVita's
2 compliance with the terms of this Consent Decree, the Order to Maintain Assets, and
3 of the Divestiture Agreements, and shall exercise such power and authority and carry
4 out the duties and responsibilities of the Monitors in a manner consistent with the
5 purposes of this Consent Decree and in consultation with the Attorney General,
6 including, but not limited to:

- 7 a. Assuring that DaVita expeditiously complies with all of its
8 obligations and perform all of its responsibilities as required by
9 this Consent Decree, the Order to Maintain Assets, and the
10 Divestiture Agreements;
11 b. Monitoring any transition services agreements;
12 c. Assuring that Material Confidential Information is not received or
13 used by DaVita or the Acquirers, except as allowed in this Consent
14 Decree and in the Order to Maintain Assets, in this matter.

15 2. The Monitors shall act in a fiduciary capacity for the benefit of the
16 Attorney General.

17 3. The Monitors shall serve for such time as is necessary to monitor
18 DaVita's compliance with the provisions of this Consent Decree, the Order to
19 Maintain Assets, and the Divestiture Agreements.

20 4. Subject to any demonstrated legally recognized privilege, the Monitors
21 shall have full and complete access to DaVita's personnel, books, documents, records
22 kept in the Ordinary Course Of Business, facilities and technical information, and such
23 other relevant information as the Monitors may reasonably request, related to DaVita's
24 compliance with its obligations under this Consent Decree, the Order to Maintain
25 Assets, and the Divestiture Agreements. DaVita shall cooperate with any reasonable
26 request of the Monitors and shall take no action to interfere with or impede the
27 Monitors' ability to monitor DaVita's compliance with this Consent Decree, the Order
28 to Maintain Assets, and the Divestiture Agreements.

1 5. The Monitors shall serve, without bond or other security, at the expense
2 of DaVita on such reasonable and customary terms and conditions as the Attorney
3 General may set. The Monitors shall have authority to employ, at the expense of
4 DaVita, such consultants, accountants, attorneys and other representatives and
5 assistants as are reasonably necessary to carry out the Monitors' duties and
6 responsibilities. The Monitors shall account for all expenses incurred, including fees
7 for services rendered, subject to the approval of the Attorney General.

8 6. DaVita shall indemnify the Monitors and hold the Monitors harmless
9 against any losses, claims, damages, liabilities, or expenses arising out of, or in
10 connection with, the performance of the Monitors' duties, including all reasonable fees
11 of counsel and other reasonable expenses incurred in connection with the preparations
12 for, or defense of, any claim, whether or not resulting in any liability, except to the
13 extent that such losses, claims, damages, liabilities, or expenses result from
14 misfeasance, gross negligence, willful or wanton acts, or bad faith by the Monitors.

15 7. DaVita shall report to the Monitors in accordance with the requirements
16 of this Consent Decree and/or as otherwise provided in any agreement approved by
17 the Attorney General. The Monitors shall evaluate the reports submitted to the
18 Monitors by DaVita, and any reports submitted by the Acquirer with respect to the
19 performance of DaVita's obligations under this Consent Decree, the Order to Maintain
20 Assets, and the Divestiture Agreements.

21 8. Within one (1) month from the date the Monitors are appointed pursuant
22 to this paragraph, every 60 days thereafter, and otherwise as requested by the Attorney
23 General, the Monitor shall report in writing to the Attorney General concerning
24 performance by DaVita of its obligations under this Consent Decree, the Order to
25 Maintain Assets, and the Divestiture Agreements.

26 9. DaVita may require the Monitors and each of the Monitors' consultants,
27 accountants, attorneys, and other representatives and assistants to sign a customary
28 confidentiality agreement; *PROVIDED, HOWEVER*, such agreement shall not restrict

1 the Monitors from providing any information to the Attorney General.

2 E. The Attorney General may, among other things, require the Monitors and
3 each of the Monitors' consultants, accountants, attorneys, and other representatives
4 and assistants to sign an appropriate confidentiality agreement Relating To materials
5 and information received from the Attorney General in connection with the
6 performance of the Monitors' duties.

7 F. If the Attorney General determines that the Monitors have ceased to act
8 or failed to act diligently, the Attorney General may apply to the Court for
9 appointment of a substitute Monitor in the same manner as provided in this Paragraph
10 VI.

11 G. The Attorney General may on its own initiative, or at the request of the
12 Monitors, apply to the Court for such additional orders or directions as may be
13 necessary or appropriate to assure compliance with the requirements of this Consent
14 Decree, the Order to Maintain Assets, and the Divestiture Agreements.

15 H. A Monitor or Monitors appointed pursuant to this Consent Decree may
16 be the same Person appointed as a trustee pursuant to Paragraph VII. of this Consent
17 Decree and may be the same Person or Persons appointed as Monitor or Monitors
18 under the Order to Maintain Assets.

19 VII.

20 APPOINTMENT OF TRUSTEE

21 A. If Defendants have not divested, absolutely and in good faith and with the
22 Attorney General's prior approval, all of the Assets To Be Divested pursuant to
23 Paragraph IV of this Consent Decree , the Attorney General may apply to the Court
24 for an Order to appoint a trustee to divest any of the Assets To Be Divested that have
25 not been divested pursuant to Paragraph IV of this Consent Decree in a manner that
26 satisfies the requirements of Paragraph IV of this Consent Decree.

27 B. In the event that the Attorney General moves for an Order to Appoint a
28 trustee, DaVita shall stipulate to the appointment of a trustee in such action to divest

1 the relevant assets in accordance with the terms of this Consent Decree. Neither the
2 appointment of a trustee nor a decision not to move for the appointment of a trustee
3 under this Paragraph shall preclude the Attorney General from seeking civil penalties
4 or any other relief available to it for any failure by the Defendants to comply with this
5 Consent Decree.

6 C. The Attorney General shall nominate the trustee, subject to the consent
7 of DaVita, which consent shall not be unreasonably withheld. The trustee shall be a
8 Person with experience and expertise in acquisitions and divestitures. If DaVita has
9 not opposed, in writing, including the reasons for opposing, the selection of any
10 proposed trustee within ten (10) days after receipt of notice of the Attorney General
11 to DaVita of the identity of any proposed trustee, DaVita shall be deemed to have
12 consented to the selection of the proposed trustee.

13 D. Within ten (10) days after appointment of a trustee, DaVita shall execute
14 a trust agreement that, subject to the prior approval of the Attorney General, transfers
15 to the trustee all rights and powers necessary to permit the trustee to effect the
16 divestitures required by this Consent Decree.

17 E. If the Court orders a trustee to be appointed by this Consent Decree ,
18 Defendants shall consent to the following terms and conditions regarding the trustee's
19 powers, duties, authority, and responsibilities:

20 1. Subject to the prior approval of the Attorney General the trustee shall
21 have the exclusive power and authority to divest any of the Assets To Be Divested that
22 have not been divested as required by Paragraph IV of this Consent Decree.

23 2. The trustee shall have twelve (12) months from the date the Attorney
24 General approves the trust agreement described herein to accomplish the divestiture,
25 which shall be subject to the prior approval of the Attorney General. If, however, at
26 the end of the twelve (12) month period, the trustee has submitted a divestiture plan
27 or believes that the divestiture can be achieved within a reasonable time, the
28 divestiture period may be extended by the Attorney General; PROVIDED,

1 HOWEVER, the Attorney General may extend the divestiture period only two (2)
2 times.

3 3. Subject to any demonstrated legally recognized privilege, the trustee shall
4 have full and complete access to the personnel, books, records, and facilities related
5 to the relevant assets that are required to be divested by this Consent Decree and to
6 any other relevant information, as the trustee may request. DaVita shall develop such
7 financial or other information as the trustee may request and shall cooperate with the
8 trustee. Defendants shall take no action to interfere with or impede the trustee's
9 accomplishment of the divestiture. Any delays in divestiture caused by Defendants
10 shall extend the time for divestiture under this Paragraph VII in an amount equal to the
11 delay, as determined by the Attorney General or, for a court-appointed trustee, by the
12 court.

13 4. The trustee shall use commercially reasonable best efforts to negotiate the
14 most favorable price and terms available in each contract that is submitted to the
15 Attorney General, subject to Defendants' absolute and unconditional obligation to
16 divest expeditiously and at no minimum price. The divestiture shall be made only in
17 a manner and to an Acquirer or Acquirers as required by this Consent Decree;
18 PROVIDED, HOWEVER, if the trustee receives bona fide offers for particular assets
19 from more than one acquiring entity, and if the Attorney General approves more than
20 one such acquiring entity for such assets, the trustee shall divest the assets to the
21 acquiring entity selected by DaVita from among those approved by the Attorney
22 General; PROVIDED FURTHER, HOWEVER, that Defendants shall select such
23 entity within five (5) days of receiving notification of the Attorney General's approval.

24 5. The trustee shall serve, without bond or other security, at the cost and
25 expense of DaVita, on such reasonable and customary terms and conditions as the
26 Attorney General or the court may set. The trustee shall have the authority to employ,
27 at the cost and expense of DaVita, such consultants, accountants, attorneys, investment
28 bankers, business brokers, appraisers, and other representatives and assistants as are

1 necessary to carry out the trustee's duties and responsibilities. The trustee shall
2 account for all monies derived from the divestiture and all expenses incurred. After
3 approval by the Attorney General of the account of the trustee, including fees for the
4 trustee's services, all remaining monies shall be paid at the direction of DaVita, and
5 the trustee's power shall be terminated. The compensation of the trustee shall be based
6 at least in significant part on a commission arrangement contingent on the divestiture
7 of the relevant assets required by this Consent Decree.

8 6. DaVita shall indemnify the trustee and hold the trustee harmless against
9 any losses, claims, damages, liabilities, or expenses arising out of, or in connection
10 with, the performance of the trustee's duties, including all reasonable fees of counsel
11 and other expenses incurred in connection with the preparation for, or defense of, any
12 claim, whether or not resulting in any liability, except to the extent that such losses,
13 claims, damages, liabilities, or expenses result from misfeasance, gross negligence,
14 willful or wanton acts, or bad faith by the trustee.

15 7. The trustee shall have no obligation or authority to operate or maintain
16 the relevant assets required to be divested by this Consent Decree.

17 8. The trustee shall report in writing to DaVita and to the Attorney General
18 every sixty (60) days concerning the trustee's efforts to accomplish the divestiture.

19 9. DaVita may require the trustee and each of the trustee's consultants,
20 accountants, attorneys, and other representatives and assistants to sign a customary
21 confidentiality agreement; PROVIDED, HOWEVER, such agreement shall not restrict
22 the trustee from providing any information to the Attorney General or from the
23 exchange of information between the Attorney General and the Commission.

24 F. If the Attorney General determines that the trustee has ceased to act or
25 failed to act diligently, the Attorney General may bring a motion to nominate a
26 substitute trustee for appointment in the same manner as provided in this Paragraph
27 VII.

28 G. The Attorney General may on its own initiative, or at the request of the

1 trustee, apply to the Court for such additional orders or directions as may be necessary
2 or appropriate to accomplish the divestiture required by this Consent Decree.

3 H. The trustee appointed pursuant to this Paragraph may be the same Person
4 appointed as the Monitor pursuant to the relevant provisions of this Consent Decree
5 or the Order to Maintain Assets.

6 VIII.

7 ORDER TO MAINTAIN ASSETS

8 On the condition that defendants consummate the Merger, and that the Attorney
9 General has not withdrawn his approval of the terms of this Consent Decree and until
10 full divestiture has been accomplished, defendants shall comply with all the terms of
11 this Court's Order to Maintain Assets filed and entered concurrently herein.

12 IX.

13 COMPLIANCE REQUIREMENTS

14 A. Beginning thirty (30) days after the date this Consent Decree is issued,
15 and every thirty (30) days thereafter until Defendants have fully complied with
16 Paragraphs IV.A., IV.B.3., IV.B.5.a., IV.B.6., IV.B.9., IV.B.13., and IV.B.17. of this
17 Consent Decree, Defendants shall submit to the Attorney General a verified written
18 report setting forth in detail the manner and form in which they intend to comply, are
19 complying, and have complied with the terms of this Consent Decree, the Order to
20 Maintain Assets and the Divestiture Agreements. Defendants shall submit at the same
21 time a copy of these reports to the Monitors, if any Monitors have been appointed.

22 B. Beginning twelve (12) months after the date this Judgment become final,
23 and annually thereafter on the anniversary of the date this Judgment becomes final, for
24 the next four (4) years, DaVita shall submit to the Attorney General verified written
25 reports setting forth in detail the manner and form in which they are complying and
26 have complied with this Consent Decree, the Order to Maintain Assets and the
27 Divestiture Agreements. Defendants shall submit at the same time a copy of these
28 reports to the Monitors, if any Monitors have been appointed.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

X.

NOTIFICATION OF CHANGE IN LEGAL STATUS

Defendants shall notify the Attorney General at least thirty (30) days prior to:

- A. any proposed dissolution of the Defendants,
- B. any proposed acquisition, merger or consolidation of Defendants, or
- C. any other change in the Defendants that may affect compliance obligations arising out of this Consent Decree, including but not limited to assignment, the creation or dissolution of subsidiaries, or any other change in Defendants.

XI.

COMPLIANCE INSPECTION

For the purpose of determining or securing compliance with this Consent Decree, and subject to any legally recognized privilege, and upon written request with reasonable notice to Defendants, Defendants shall permit any duly authorized representative of the Attorney General:

A. Access, during office hours of Defendants 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 Defendants related to compliance with this Consent Decree; and

B. Upon five (5) days' notice to Defendants and without restraint or interference from Defendants, to interview officers, directors, or employees of Defendants, who may have counsel present, regarding such matters.

XII.

NOTICES

Any notices required by this Consent Decree shall be delivered to the parties at the following addresses:

//
//

RECEIVED

SCANNED

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

For Defendants:

Joseph Schohl
VP, General Counsel and Secretary
DaVita Inc.
601 Hawaii Street
El Segundo, CA 90245

For Plaintiff:

Patricia L. Nagler, Esq.
Deputy Attorney General
Antitrust Law Section
Office of the Attorney General of California
300 South Spring Street, Suite 1700
Los Angeles, California 90013

XIII.

RETENTION OF JURISDICTION

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Consent Decree to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction, implementation, or modification of any of the provisions of this Consent Decree, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XIV.

NON COMPETE CLAUSE

The parties expressly agree that nothing in this Consent Decree shall be construed to address the validity or invalidity of any covenant not to compete, no matter how limited, in any contract defendants and each of them, have entered into with a third party, employee or independent contractor.

XV.

ATTORNEYS FEES AND COSTS

A. Plaintiff is awarded its attorneys' fees and costs in the amount of \$85,000 for reimbursement of fees and costs incurred by Plaintiff in this matter for all work performed in this matter. Defendants shall pay this sum to Plaintiff within ten (10)

1 business days of entry of this Consent Decree.

2 B. If plaintiff successfully brings an action to enforce the provisions of this
3 Consent Decree, defendants shall reimburse plaintiff all reasonable costs and
4 attorneys' fees associated with bringing such enforcement action.

SCANNED

5 XVI.

6 TERMINATION

7 This Consent Decree will expire and terminate ten (10) years from the date of
8 its entry.

9 XVII.

10 PUBLIC INTEREST

11 Entry of this Consent Decree is in the public interest.

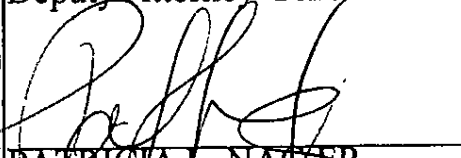
12
13 Dated this 4th day of Oct, 2005.

14
15 RONALD S.W. LEW

16 UNITED STATES DISTRICT JUDGE

17 Presented by:

- 18 BILL LOCKYER
Attorney General of the State of California
- 19 RICHARD M. FRANK
Chief Assistant Attorney General
- 20 THOMAS GREENE
Chief Assistant Attorney General
- 21 KATHLEEN FOOTE
Senior Assistant Attorney General
- 22 BARBARA M. MOTZ
Supervising Deputy Attorney General
- 23 PATRICIA L. NAGLER
Deputy Attorney General

24
25 

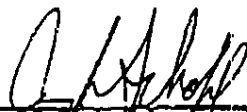
26 PATRICIA L. NAGLER
Attorneys for the Plaintiff
27 STATE OF CALIFORNIA

28 //

1 DAVITA, INC.

2

3



 Joseph Schohl
 VP, General Counsel and Secretary
 Davita Inc.
 601 Hawaii Street
 El Segundo, CA 90245
 Telephone: (310) 536-2529
 Facsimile: (866) 891-4866
 E-mail: jschohl@davita.com

8

9

10

11 GAMBRO HEALTHCARE, INC.

12

13

Jon Kweller, SBN 215995
 West Division Counsel
 Gambro Healthcare, Inc.
 15253 Bake Parkway
 Irvine, CA 92618
 Telephone: (949) 930-6880
 Facsimile: (949) 930-6949
 E-mail: jon.kweller@us.gambro.com

18

19

20

21

22

23

24

25

26

27

28

1 DaVita Inc.
2 601 Hawaii Street
3 El Segundo, CA 90245
4 Telephone: (310) 536-2529
5 Facsimile: (866) 891-4866
6 E-mail: jschohl@davita.com

7
8 GAMBRO HEALTHCARE, INC.

9 

10 Jon Kweller, SBN 215995
11 West Division Counsel
12 Gambro Healthcare, Inc.
13 15253 Bake Parkway
14 Irvine, CA 92618
15 Telephone: (949) 930-6880
16 Facsimile: (949) 930-6949
17 E-mail: jon.kweller@us.gambro.com

18
19
20
21
22
23
24
25
26
27
28

SCANNED

SCANNED

Appendix A

CLINICS

A

SCANNED

	Clinic Name	Clinic Address
1.	DaVita Chula Vista	1181 Broadway Suite 5 Chula Vista, CA 91911
2.	DaVita Community Hemodialysis	1800 Haight Street San Francisco, CA 94117
3.	Eastmont Dialysis Center	6955 Foothill Boulevard Oakland, CA 94605
4.	Mission Dialysis Center of El Cajon	858 Fletcher Parkway El Cajon, CA 92020
5.	Indio Dialysis Center	46767 Monroe Street Suit 101 Indio, CA 92201
6.	Irvine Dialysis Center	16255 Laguna Canyon Road Irvine, CA 92618
7.	Mission Dialysis Center of Oceanside	2227-B El Camino Real Oceanside, CA 92054
8.	DaVita Ocean Garden	1738 Ocean Avenue San Francisco, CA 94112
9.	Pacific Coast Dialysis Center	1416 Centinela Avenue Inglewood, CA 90302
10.	Palm Desert Dialysis Center	41-501 Corporate Way Palm Desert, CA 92260
11.	Peralta Renal Center	2757 Telegraph Avenue Oakland, CA 94612

	Clinic Name	Clinic Address
12.	Piedmont Dialysis Center	2710 Telegraph Avenue Suite 200 Oakland, CA 94612
13.	Potrero Hill Dialysis Center	1750 Cesar Chavez Street Suite A San Francisco, CA 94124
14.	Rialto Dialysis Center	1850 North Riverside Suite 150 Rialto, CA 92376
15.	Mission Dialysis of San Diego	7007 Mission Gorge Road 1 st Floor San Diego, CA 92120
16.	DaVita San Leandro	198 East 14 th Street San Leandro, CA 94577
17.	DaVita Garey Dialysis Center	1880 North Garey Ave Pomona, CA 91767
18.	Chico Dialysis Center	1030 Village Lane Chico, CA 95926
19.	East Olympic Dialysis Center	5714 E. Olympic Boulevard Commerce, CA 90022
20.	Elk Grove Dialysis Center	8139 Elk Grove Boulevard Suite 200 Elk Grove, CA 96758
21.	Gambro Healthcare – Fountain Valley	17197 Newhope Avenue Suite A, B, C Fountain Valley, CA 92708
22.	Garden Grove Dialysis Center	12555 Garden Grove Boulevard Garden Grove, CA 92843

SCANNED

	Clinic Name	Clinic Address
23.	Harbor Boulevard Dialysis Center	12761 Harbor Boulevard Garden Grove, CA 92840
24.	Los Angeles Dialysis Center	11859 Compton Avenue Los Angeles, CA 90059
25.	Placer Dialysis Center	1451 Secret Ravine Parkway Bldg. D Roseville, CA 95661
26.	Redlands Dialysis Center	1210 Indiana Court Redlands, CA 92374
27.	Roseville Dialysis Center	218 Harding Boulevard Roseville, CA 95678
28.	San Bernardino Dialysis Center	1500 North Waterman Avenue San Bernardino, CA 92404
29.	San Joaquin Dialysis Center	3115 West March Lane Stockton, CA 95219
30.	Solano Dialysis Center	490 Chadbourne Road Fairfield, CA 94534
31.	Stockton Dialysis Center	2350 N. California Street Stockton, CA 95204
32.	Tustin Dialysis Center	535 East First Street Tustin, CA 92780-3312
33.	Westminster North	290 Hospital Cr. Westminster, CA 92683

SCANNED

SCANNED

APPENDIX B

B

AREA DEFINITIONS

SCANNED

- Five digit numbers refer to zip codes.
- Geographic areas bounded by roads include all properties abutting the referenced road (i.e. properties on both sides of the road).
- Zip codes or other areas fully surrounded by areas included in the area definition shall be considered part of the area definition.
- Area definitions are based on maps submitted to the Commission staff by DaVita.

	Divested Clinics	Corresponding Area Definition
1	Solano Dialysis Center	The area in and/or near Fairfield, California, consisting of: 94533, 94534, 94535; and the portion of 94585 that lies to the west of the line formed by: (1) the section of Denverton Rd. between the northern border of 94535 and the intersection of Denverton Rd. and State Hwy. 12, (2) the section of State Hwy. 12 between the intersection of State Hwy. 12 and Denverton Rd. and the intersection of State Hwy. 12 and Shiloh Rd., and (3) the section of Shiloh Rd. between the intersection of Shiloh Rd. and State Hwy. 12 and the southern border of 94535.
2	East Olympic Dialysis Center	The area in and/or near Los Angeles, California, that is circumscribed by the line formed by: (1) the section of N. Lorena St. between the intersection of N. Lorena St. and E. Cesar E. Chavez Ave. and the intersection of N. Lorena St. and S. Lorena St., (2) the section of S. Lorena St. between the intersection of N. Lorena St. and S. Lorena St. and the intersection of S. Lorena St. and S. Grande Vista Ave.,

Divested Clinics	Corresponding Area Definition
	<p>(3) the section of S. Grande Vista Ave. between the intersection of S. Lorena St. and S. Grand Vista Ave. and the intersection of S. Grand Vista Ave. and S. Downey Rd.,</p> <p>(4) the section of S. Downey Rd. between the intersection of S. Grand Vista Ave. and S. Downey Rd. and the intersection of S. Downey Rd. and Bandini Blvd.,</p> <p>(5) the section of Bandini Blvd. between the intersection of S. Downey Rd. and Bandini Blvd. and the intersection of Bandini Blvd. and Garfield Ave.,</p> <p>(6) the section of Garfield Ave. between the intersection of Bandini Blvd. and Garfield Ave. and the intersection of Garfield Ave. and Telegraph Rd.,</p> <p>(7) the section of Telegraph Rd. between the intersection of Garfield Ave. and Telegraph Rd. and the intersection of Telegraph Rd. and S. Greenwood Ave.,</p> <p>(8) the section of Greenwood Ave. between the intersection of S. Greenwood Ave. and Telegraph Rd. and the intersection of S. Greenwood Ave. and Montebello Way,</p> <p>(9) the section of Montebello Way between the intersection of S. Greenwood Ave. and Montebello Way and the intersection of Montebello Way and S. Montebello Blvd.,</p> <p>(10) the section of S. Montebello Blvd. between the intersection of Montebello Way and S. Montebello Blvd. and the intersection of S. Montebello Blvd. and N. Montebello Blvd.,</p> <p>(11) the section of N. Montebello Blvd. between the intersection of S. Montebello Blvd. and N. Montebello Blvd. and the intersection of N. Montebello Blvd. and Paramount Blvd.,</p> <p>(12) the section of Paramount Blvd. between the intersection of N. Montebello Blvd. and Paramount Blvd.</p>

SCANNED

Divested Clinics	Corresponding Area Definition
	<p>and the intersection of Paramount Blvd. and Arroyo Dr.,</p> <p>(13) the section of Arroyo Dr. between the intersection of Paramount Blvd. and Arroyo Dr. and the intersection of Arroyo Dr. and Ackley St.,</p> <p>(14) the section of Ackley St. between the intersection of Arroyo Dr. and Ackley St. and the intersection of Ackley St. and Fulton Ave.</p> <p>(15) the section of Fulton Ave. between the intersection of Ackley St. and Fulton Ave. and the intersection of Fulton Ave. and Wilcox Ave.,</p> <p>(16) the section of Wilcox Ave. between the intersection of Fulton Ave. and Wilcox Ave. and the intersection of Wilcox Ave. and W. El Repetto Dr.,</p> <p>(17) the section of W. El Repetto Dr. between the intersection of Wilcox Ave. and W. El Repetto Dr. and the intersection of W. El Repetto Dr. and S. Atlantic Blvd.,</p> <p>(18) the section of S. Atlantic Blvd. between the intersection of W. El Repetto Dr. and S. Atlantic Blvd. and the intersection of S. Atlantic Blvd. and Brightwood St.</p> <p>(19) the section of Brightwood St. between the intersection of S. Atlantic Blvd. and Brightwood St. and Brightwood St. and Monterey Pass Rd.</p> <p>(20) the section of Monterey Pass Rd. between the intersection of Brightwood St. and Monterey Pass Rd. and the intersection of Monterey Pass Rd. and E. Cesar E. Chavez Ave., and</p> <p>(21) the section of E. Cesar E. Chavez Ave. between the intersection of S. Monterey Pass Ave. and E. Cesar E. Chavez Ave. and the intersection of E. Cesar E. Chavez Ave. and N. Lorena St.</p>

Divested Clinics	Corresponding Area Definition
3 Los Angeles Dialysis Center	<p>The area in and/or near Lynwood, California, that is circumscribed by the line formed by:</p> <p>(1) the section of I-110 between the intersection of I-110 and Route 42 and the intersection of I-110 and Alondra Blvd.,</p> <p>(2) the section of Alondra Blvd. between the intersection of I-110 and Alondra Blvd. and the intersection of Alondra Blvd. and I-710,</p> <p>(3) the section of I-710 between the intersection of Alondra Blvd. and I-710 and the intersection of I-710 and Abbott Rd.,</p> <p>(4) the section of Abbott Rd. between the intersection of I-710 and Abbott Rd. and the intersection of Abbott Rd. and Wright Rd.,</p> <p>(5) the section of Wright Rd. between the intersection of Abbott Rd. and Wright Rd. and the intersection of Wright Rd. and Atlantic Ave.,</p> <p>(6) the section of Atlantic Ave. between the intersection of Wright Rd. and Atlantic Ave. and the intersection of Atlantic Ave. and Route 42, and</p> <p>(7) the section of Route 42 between the intersection of I-710 and Route 42 and the intersection of Route 42 and I-110.</p>
4 Peralta Renal Center, Piedmont Dialysis Center, Eastmont Dialysis Center, DaVita San Leandro	<p>The area in and/or near Oakland, California, consisting of: 94501, 94502, 94546, 94577, 94578, 94579, 94601, 94602, 94603, 94604, 94605, 94606, 94607, 94608, 94609, 94610, 94611, 94612, 94613, 94614, 94618, 94619, 94620, 94621, 94622, 94623, 94624, 94625, 94643, 94649, 94659, 94660, 94661, 94662, 94666, 94702, 94703, 94704, 94705, 94710, 94712, 94720; and the portion of 94580 that lies to the north of the line formed by I-238.</p>

RECEIVED
 10/10/05

	Divested Clinics	Corresponding Area Definition
5	San Joaquin Dialysis Center, Stockton Dialysis Center	<p>The area in and/or near Stockton, California, consisting of:</p> <p>95201, 95202, 95203, 95204, 95205, 95206, 95207, 95208, 95209, 95210, 95211, 95212, 95213, 95215, 95219, 95231, 95234, 95237, 95240, 95241, 95242, 95253, 95258, 95267, 95269, 95296, 95297; and the portion of 95220 that lies to the south of the line formed by:</p> <p>(1) the section of W. Peltier Rd. between the western border of 95220 and the intersection of W. Peltier Rd. and E. Peltier Rd.,</p> <p>(2) the section of E. Peltier Rd. between the intersection of W. Peltier Rd. and E. Peltier Rd. and the intersection of N. Tully Rd.,</p> <p>(3) the section of N. Tully Rd. between the intersection of E. Peltier Rd. and N. Tully Rd. and the intersection of N. Tully Rd. and E. Jahant Rd.</p> <p>(4) the section of E. Jahant Rd. between the intersection of N. Tully Rd. and E. Jahant Rd. and the intersection of E. Jahant Rd. and N. Mackville Rd., and</p> <p>(6) the section of N. Mackville Rd. between the intersection E. Jahant Rd. and N. Mackville Rd. and the eastern border of 95220.</p>
6	Chico Dialysis Center	<p>The area in and/or near Chico, California, consisting of:</p> <p>95926, 95927, 95928, 95929, 95938, 95943, 95951, 95967, 95969, 95973, 95976.</p>

	Divested Clinics	Corresponding Area Definition
7	Palm Desert Dialysis Center, Indio Dialysis Center	<p>The area in and/or near Palm Springs, California, consisting of: 92201, 92202, 92203, 92210, 92211, 92234, 92235, 92236, 92247, 92248, 92253, 92260, 92261, 92270, 92276; and the portion of 92262 that lies to the east of the line formed by: (1) the portion of Route 111 between the northern border of 92262 and the intersection of Route 111 and Tramway Rd. and (2) the portion of Tramway Rd. between the intersection of Route 111 and Tramway Rd. and the southern border of 92262.</p>
8	DaVita Garey	<p>The area in and/or near Pomona, California, consisting of: 91701, 91708, 91710, 91711, 91729, 91730, 91743, 91750, 91758, 91761, 91762, 91763, 91764, 91766, 91767, 91768, 91769, 91784, 91785, 91786, 91798; and the portion of 91773 that lies to the southeast of the line formed by: (1) the section of Arrow Hwy. between the eastern border of 91773 and the intersection of Arrow Hwy. and S. Lone Hill Ave., (2) the section of S. Lone Hill Ave. between the intersection of Arrow Hwy. and S. Lone Hill Ave. and the intersection of S. Lone Hill Ave. and Badillo St., and (3) the section of Badillo St. between the intersection of S. Lone Hill Ave. and Badillo St. and the western border of 91773.</p>

SCANNED

Divested Clinics	Corresponding Area Definition
<p>9 Redlands Dialysis Center, San Bernardino Dialysis Center, Dialysis Center of Colton, Rialto Dialysis Center</p>	<p>The area in and/or near San Bernardino, California, consisting of: 92313, 92316, 92318, 92324, 92334, 92335, 92336, 92346, 92350, 92354, 92357, 92369, 92374, 92375, 92376, 92377, 92401, 92403, 92404, 92405, 92406, 92407, 92408, 92410, 92411, 92412, 92413, 92415, 92418, 92423, 92424, 92427; the portion of 92373 that lies to the west of the line formed by: (1) the section of Alessandro Rd. between the southern border of 92373 and the intersection of Alessandro Rd. and W. Sunset Dr., (2) the section of W. Sunset Drive. between the intersection of Alessandro Rd. and W. Sunset Dr. and the intersection of W. Sunset Dr. and E. Sunset Drive S., (3) the section of E. Sunset Drive S. between the intersection of W. Sunset Dr. and E. Sunset Drive S. and the intersection of E. Sunset Drive S. and Alta Vista Dr., and (4) the section of Alta Vista Dr. between the intersection of E. Sunset Drive S. and Alta Vista Dr. and the northern border of 92373; and the portion of 92359 that lies to the west of the line formed by Crafton Ave.; <i>but excluding</i> 92317, 92321, 92322, 92325, 92352.</p>

SCANNED

	Divested Clinics	Corresponding Area Definition
10	Gambro Westside	<p>The area in and/or near Hollywood, California, consisting of: 90035, 90036, 90048, 90069, 90211, 90212, 90213; the portion of 90210 to the southeast of the line formed by:</p> <ol style="list-style-type: none"> (1) the section of Sunset Blvd. between the western border of 90210 and the intersection of Sunset Blvd. and N. Whittier Dr., (2) the section of N. Whittier Dr. between the intersection of Sunset Blvd. and N. Whittier Dr. and the intersection of N. Whittier Dr. and Lexington Rd., (3) the section of Lexington Rd. between the intersection of N. Whittier Dr. and Lexington Rd. and the intersection of Lexington Rd. and N. Beverly Dr., (4) the section of N. Beverly Dr. between the intersection of Lexington Rd. and N. Beverly Dr. and the intersection of N. Beverly Dr. and Coldwater Canyon Dr., (5) the section of Coldwater Canyon Dr. between the intersection of N. Beverly Dr. and Coldwater Canyon Dr. and the intersection of Coldwater Canyon Dr. and Mulholland Dr., (6) the section of Mulholland Dr. between the intersection of Coldwater Canyon Dr. and Mulholland Dr. and the intersection of Mulholland Dr. and the eastern border of 90210; and <p>the portion of 90046 that lies to the south of the line formed by Hollywood Blvd.; and the portion of 90019 that lies to the west of the line formed by S. La Brea Ave.</p>

SCANNED

	Divested Clinics	Corresponding Area Definition
11	Tustin Dialysis Center, Westminister North, Gambro Healthcare – Fountain Valley, Harbor Boulevard Dialysis Center, Garden Grove Dialysis Center, Irvine Dialysis Center,	The area in and/or near Irvine, California, consisting of: 92602, 92603, 92604, 92605, 92606, 92609, 92612, 92614, 92616, 92617, 92618, 92619, 92620, 92623, 92626, 92628, 92630, 92637, 92647, 92650, 92653, 92654, 92655, 90680, 92683, 92684, 92685, 92697, 92698, 92701, 92702, 92703, 92704, 92705, 92706, 92707, 92708, 92711, 92712, 92725, 92728, 92735, 92780, 92781, 92782, 92799, 92802, 92825, 92840, 92841, 92842, 92843, 92844, 92856, 92859, 92864, 92866, 92867, 92869, 92868, and 92610; <i>but excluding</i> Limestone Canyon Regional Park and Whiting Ranch Regional Park
12	Pacific Coast Dialysis Center	The area in and/or near Inglewood, California, consisting of: 90008, 90043, 90056, 90083, 90189, 90230, 90231, 90233, 90301, 90302, 90303, 90304, 90305, 90308, 90309, 90310, 90313, 90398; and the portion of 90045 that lies to the east of the line formed by Route 1.
13	Elk Grove Dialysis Center, Roseville Dialysis Center, Placer Dialysis Center	The area in and/or near Sacramento, California, consisting of: 95650, 95661, 95677, 95678, 95746, 95747, 95765; and Sacramento County (California); <i>but excluding</i> 94571, 95615, 95632, 95638, 95641, 95680, 95683, 95686, 95690, 95693, 95837.

SCANNED

	Divested Clinics	Corresponding Area Definition
14	Potrero Hill Dialysis Center, DaVita Community Hemodialysis, DaVita Ocean Garden, South San Francisco Dialysis Center	The area in and/or near San Francisco, California, consisting of: San Francisco County (California) and 94005, 94013, 94014, 94015, 94016, 94017, 94030, 94031, 94044, 94045, 94066, 94067, 94080, 94083, 94128, 94167, 94170.
15	Mission Dialysis Center of Oceanside, Mission Dialysis of San Diego, Mission Dialysis Center of El Cajon, DaVita Chula Vista	The area in and/or near San Diego, California, consisting of: San Diego County (California); <i>but excluding</i> 91901, 91903, 91905, 91906, 91916, 91917, 91931, 91934, 91935, 91948, 91962, 91963, 91980, 91987, 92004, 92028, 92036, 92059, 92060, 92061, 92065, 92066, 92070, 92082, 92086, 92672.

SCANNED

UNRECORDED

SCANNED

MONITOR AGREEMENT

MONITOR AGREEMENT (the "Agreement"), dated as of September 12, 2005, between DaVita Inc ("Defendant"), and John Strack and Mitch Nielson of FocalPoint Medical Consulting Group ("Monitors").

PRELIMINARY STATEMENT

WHEREAS the California Attorney General, on behalf of plaintiff, State of California, and Defendant have executed and lodged with the United States District Court for the Central District of California a Consent Decree and Final Judgment (hereinafter, Consent Decree) , which provides, among other things, that Defendant divest a number of dialysis clinics and assets associated with those clinics, Defendant terminate management contracts Defendant has with certain dialysis clinics, enter into agreements – if necessary –providing the acquirers of the dialysis clinics with transition services, and engage a monitor to monitor Defendant's compliance with its obligations under the Consent Decree;

WHEREAS, it is expected that the Consent Decree will be signed by the Court and that the Court will appoint the Monitors pursuant to the Consent Decree to monitor Defendant's compliance with the terms of the Consent Decree, and the Monitors have consented to such appointment;

WHEREAS, the Consent Decree further provides that Defendant shall execute an agreement, subject to prior approval of the California Attorney General, conferring all the rights and powers necessary to permit the Monitors to carry out their duties and responsibilities pursuant to the Consent Decree;

WHEREAS, this Monitor Agreement, although executed by the Monitors and Defendant, is not effective for any purpose, including but not limited to imposing rights and responsibilities on Defendant or the Monitors under the Consent Decree, until the Consent Decree, has been signed by the Court . and the Monitor Agreement has been approved by the California Attorney General;

WHEREAS, the parties to this Agreement intend to be legally bound. , subject only to the issuance of the Consent Decree and the California Attorney General's approval of this Agreement .

DEFINITIONS

1. "Defendant "DaVita" means DaVita Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at El Segundo, CA, its directors, officers, employees, agents, attorneys, representatives, predecessors, successors, and assigns; its joint ventures, divisions, groups and

SCANNED

affiliates controlled by DaVita, and the respective directors, officers, employees, agents, attorneys, representatives, predecessors, successors, and assigns of each.

2. "Other Parties" means any Person that receives approval of the California Attorney General to acquire any of the Assets To Be Divested or is a party to the Relevant Agreements pursuant to Paragraph II and VII of the Consent Decree.

3. "Acquisition Date" means the date on which the first of the Relevant Agreements pursuant to Paragraph II and VII of the Consent Decree goes into effect.

4. "Relevant Agreements" means: all the divestiture agreements, management termination agreements, and transition services agreements entered into pursuant to Paragraphs II and V of the Consent Decree, including but not limited to, the Renal Advantage Divestiture Agreements, the Colton Clinic Management Termination Agreement, the South San Francisco Clinic Management Termination Agreement, and the Transition Services Agreement between Renal Advantage Inc. and DaVita.

5. All other capitalized words or phrases appearing in this Agreement that are not otherwise defined herein are deemed to have the defined meanings assigned to them in the Consent Decree.

ARTICLE I

Powers of the Monitors. The Monitors shall have the rights, duties, powers and authority conferred upon the Monitors by the Consent Decree that are necessary for the Monitors to monitor Defendant's compliance with the Consent Decree. No later than one day after the Consent Decree, is signed and notice provided to Defendant, Defendant hereby transfers to the Monitors all rights, powers, and authorities necessary to permit the Monitors to perform their duties and responsibilities pursuant to the Consent Decree and consistent with the purposes of the Consent Decree. Any descriptions thereof contained in this Agreement in no way modify the Monitors' powers and authority or Defendant's obligations under the Consent Decree and other orders issued by the Court in this matter (hereinafter jointly referred to as Orders).

Monitors' Duties. The Monitors shall monitor Defendant's compliance with the Orders, including but not limited to:

- a. Assuring that Defendant expeditiously comply with all of their obligations and perform all of their responsibilities as required by the Orders in this matter;
- b. Monitoring Relevant Agreements;
- c. Assuring that Confidential Business Information is not received or used by Defendant or Other Parties, except as allowed in the Orders in this matter.

SCANNED

Duration of Monitors' Authority. The Monitors shall have all powers and duties described above and consistent with the Orders for the term set forth in the Orders.

Confidential and Proprietary Information. The Monitors shall enter into a confidentiality agreement, attached hereto as Confidential Exhibit A, agreeing to be bound by the terms and conditions of the Orders. The Monitors must retain and maintain all Material Confidential Information it receives from either Defendant or Relevant Parties on a confidential basis except as is permitted by the Orders. The Monitors may disclose confidential information only to persons employed by or working with the Monitors under this Agreement, to persons employed by the California Attorney General the Federal Trade Commission and the State of Michigan, and as permitted by Defendant or Relevant Parties with respect to information they provided the Monitor. The Monitors shall require any person retained by the Monitors to assist in carrying out the duties and responsibilities of the Monitors to execute a confidentiality agreement that requires the same standard of care and obligations of confidentiality to which the Monitors must adhere under this Agreement. The Monitors shall maintain the confidentiality, for a period of five (5) years after the termination of this Agreement, of all other aspects of the performance of his duties under this Agreement and shall not disclose any confidential information relating thereto. Monitor reports that are provided to persons employed at the Commission, the State of Michigan, and the California Attorney General may be shared between persons employed at the Commission, the State of Michigan, and the California Attorney General.

Restrictions. The Monitors shall not be involved in any way in the management, production, supply and trading, sales marketing, and financial operations of the competing products of the Defendant.

Reports. Monitors shall report to the California Attorney General pursuant to the terms of the Orders and as otherwise requested by the staff of the California Attorney General's Office.

Access to records, documents and facilities. Subject to any demonstrated legally recognized privilege, the Monitors shall have full and complete access to Defendant's personnel, books, documents, records kept in the normal course of business, facilities and technical information, and such other relevant information as the Monitors may reasonably request, related to Defendant's compliance with their obligations under the Orders in this matter. Defendant shall cooperate with any reasonable request of the Monitors and shall take no action to interfere with or impede the Monitors' ability to monitor Defendant's compliance with the Orders.

ARTICLE II

Retention and payment of Counsel, Consultants, and other Assistants. The Monitors shall have the authority to employ, at the cost and expense of the Defendant, such attorneys, consultants, accountants, and other representatives and assistants as are necessary to carry out the Monitors' duties and responsibilities as allowed pursuant to the Orders.

Compensation. Defendant shall compensate the Monitors for their services under this Agreement pursuant to the fee schedule attached as Confidential Exhibit B for time spent in connection with the discharge of their duties under this Agreement and the Orders. In addition, Defendant will pay: (a) out-of-pocket expenses reasonably incurred by the Monitors in the performance of their duties under the Mandate; and (b) fees and disbursements reasonably incurred by any advisor appointed by the Monitors pursuant to the first paragraph in Article II. At its own expense, Defendant may retain an independent auditor to verify such invoices. The Monitors shall provide Defendant with monthly invoices for time and expenses that include details and an explanation of all matters for which the Monitors submit an invoice to Defendant. Defendant shall pay such invoices within thirty (30) days of receipt. When filing the same report with the Commission, the State of Michigan, and the California Attorney General, the Monitors will not charge Defendant additional fees for each report.

ARTICLE III

Monitors' liabilities and indemnification. Defendant shall indemnify the Monitors and hold the Monitors harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitors' duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation 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 misfeasance, gross negligence, willful or wanton acts, or bad faith by the Monitors.

Monitor's removal. If the California Attorney General determines that Monitors cease to act or fail to act diligently and consistent with the purpose of the Orders, Defendant shall terminate this Agreement and appoint a substitute Monitor(s), subject to approval by the California Attorney General and consistent with the Orders.

Approval by the California Attorney General. This Agreement shall have no force or effect until approved by the California Attorney General, other than Defendant obligations under Exhibit A and the confidentiality provisions herein. Termination: This Agreement shall terminate the earlier of: (a) the date set forth in the Orders; (b) Defendant' receipt of written notice from the California Attorney General that the California Attorney General has determined that John Strack and Mitch Nielsen have ceased to act or failed to act diligently, or are unwilling or unable to continue to serve as Monitor; (c) with at least thirty (30) days advance notice to be provided by the Monitor to Defendant and to the California Attorney General, upon resignation of the Monitors; or (d) when DaVita's last obligation under the Orders and the Relevant Agreements that pertains to the Monitors' service has been fully performed, provided, however, that the California Attorney General may require that DaVita extend this Monitor Agreement or enter into an additional agreement with the Monitors as may be necessary or appropriate to accomplish the purposes of the Orders. If this Monitor Agreement is terminated for any reason, the confidentiality obligations set forth in this Agreement will remain in force. The termination of the Monitors pursuant to this Monitor Agreement and Orders does not change the status of the Monitors with regard to any other

Monitor Agreement entered into by Defendant with the State of Michigan and the Federal Trade Commission. Termination of the Monitors pursuant to the Monitor Agreements entered into by the Defendant with the State of Michigan and the Federal Trade Commission pursuant to their orders or consent decrees does not change the status of the Monitors with regard to this Monitor Agreement and Orders.

Conflicts of Interest: If the Monitors become aware during the term of this Agreement that they jointly or individually have or may have a conflict of interest that may affect or could have the appearance of affecting performance by the Monitors of any of their duties under this Agreement, the Monitors shall promptly inform Defendant and the California Attorney General of any such conflict.

SCANNED

SCANNED

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

MONITORS

BY: *[Signature]*

NAME: Johanna Strack
FocalPoint Medical Consulting Group

BY: _____

NAME: _____
FocalPoint Medical Consulting Group

DEFENDANT

BY: _____

NAME: _____

TITLE: _____

SCANNED

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

MONITORS

BY: _____

NAME: _____
FocalPoint Medical Consulting Group

BY: Mitch S. Nielson

NAME: MITCH S. NIELSON
FocalPoint Medical Consulting Group

DEFENDANT

BY: _____

NAME: _____

TITLE: _____

SCANNED

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

MONITORS

BY: _____

BY: _____

NAME: _____
FocalPoint Medical Consulting Group

NAME: _____
FocalPoint Medical Consulting Group

DEFENDANT

BY: *[Signature]*

NAME: _____

TITLE: _____

SCANNED

SCANNED

APPENDIX C
Exhibit A - Filed Under Seal
Pages 0065 thru 0068

SCANNED

SCANNED

APPENDIX C
Exhibit B - Filed Under Seal
Page 0069

SCANNED

SCANNED

APPENDIX D
Filed Under Seal
Pages 0070 thru 0180

SCANNED

SCANNED

APPENDIX E
Filed Under Seal
Pages 0181 thru 0579

SCANNED

SCANNED

APPENDIX F
Filed Under Seal
Pages 0580 thru 0994

SCANNED

SCANNED

APPENDIX G
Filed Under Seal
Pages 0995 thru 1016

DECLARATION OF SERVICE BY U.S. MAIL

SCANNED

Case Name: **STATE OF CALIFORNIA v. DAVITA, INC., ET AL.** Case No.:

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is 300 South Spring Street, Los Angeles, CA 90013.

On **October 4, 2005**, I served the attached **FINAL JUDGMENT AND CONSENT DECREE**, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at Los Angeles, California, addressed as follows:

Joseph Schohl
VP, General Counsel and Secretary
DaVita, Inc.
601 Hawaii Street
El Segundo, CA 90245
Telephone: (310) 536-2529
Facsimile: (866) 891-4866
E-mail: jschohl@davita.com
ATTORNEYS FOR DAVITA, INC.

Jon Kweller
West Division Counsel
Gambro Healthcare, Inc.
15253 Bake Parkway
Irvine, CA 92618
Telephone: (949) 930-6880
Facsimile: (949) 930-6949
E-mail: jon.kweller@us.gambro.com
ATTORNEYS FOR GAMBRO HEALTHCARE, INC.

Courtesy copies mailed as follows:

Joel Grosberg
Gregory Heltzer
McDermott Will and Emory
600 13th Street N.W.
Washington, D.C. 20005
Telephone: (202) 756-8207
Facsimile: (202) 756-8087
E-mail: jgrosberg@mwe.com

Jessica K. Delbaum
Shearman & Sterling LLP
599 Lexington Avenue
New York, NY 10022
Telephone: (212) 848-4815
Facsimile: (646) 848-4815

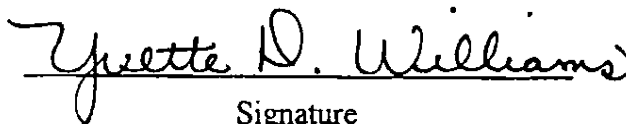
Rendell Davis
Federal Trade Commission
Compliance Section
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

Beau W. Buffier
Shearman & Sterling LLP
599 Lexington Avenue
New York, NY 10022
Telephone: (212) 848-4843
Facsimile: (646) 848-4843
E-mail: bbuffier@shearman.com

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on October 4, 2005, at Los Angeles, California.

Yvette D. Williams

Typed Name



Signature