

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Deborah Platt Majoras, Chairman
Pamela Jones Harbour
Jon Leibowitz
William E. Kovacic
J. Thomas Rosch

In the Matter of

DAVITA INC.,
a corporation.

File No. 051-0051, Docket No. C-4152

RESPONDENT'S MOTION FOR EXTENSION OF TIME

Respondent DaVita Inc. (hereafter referred to as "Respondent") respectfully requests an extension of time to obtain the prior approval of the Federal Trade Commission ("Commission") for the divestiture of the Owned Real Property, as defined and described in the Decision and Order in the above captioned matter ("Order"). Respondent has reached agreement with two Acquirers for the divestiture of the Owned Real Property, subject to Commission approval and has filed simultaneously with this motion, a petition to the Commission for approval of this proposed divestiture. In order to allow time for Respondent to obtain Commission approval of this divestiture, Respondent respectfully requests that the number of days Respondent has to obtain the prior approval of the Commission for the divestiture of the Owned Real Property be extended from 120 days to 180 days.

In accordance with 16 C.F.R. §§ 3.22 and 4.3(b), Respondent states the following in support of its motion.

1. On October 4, 2005, the Commission accepted the Agreement Containing Consent Orders in the above captioned matter, which included the Decision and Order (collectively the "Consent Agreement") for public comment. The public comment period expired on November 1, 2005 and the Commission approved the issuance of a final consent order on November 18, 2005. Section II of the Order requires that Respondent divest sixty-nine (69) dialysis clinics to Commission approved Acquirers and end two management services contracts. Respondent completed the sale of all sixty-nine (69) centers to Commission approved Acquirers, almost all of which were sold to Renal Advantage Inc. ("Renal Advantage"), and terminated both management services contracts by October 6, 2005. Respondent has complied with all of its divestiture obligations under Paragraph II, except for the sale of the Owned Real Property. The

Owned Real Property¹ refers to the real property underlying four dialysis clinics, which Respondent sold to Renal Advantage on October 6, 2005.

2. The divestiture of the Owned Real Property relates solely to the sale of the physical building and real property of four (4) of the sixty-nine (69) divested clinics. Independent third party landlords own the real property for sixty-five (65) out of the sixty-nine (69) clinics divested, and Commission staff required Respondent to assign these leases to Renal Advantage as part of the Order. Prior to recommending the consent package, Commission staff required that Respondent enter into a long-term lease with Renal Advantage for the Owned Real Property with certain restrictions that serve to protect Renal Advantage during the interim period when Respondent continued to own these properties. The Acquirers of the Owned Real Property will be assuming the leases between Respondent and Renal Advantage that Commission staff already reviewed and approved.

3. Paragraph II.A.5. of the Order requires that Respondent divest the Owned Real Property within 120 days after the date the Consent Agreement is accepted for public comment. Respondent has reached agreement with two buyers for all of the Owned Real Property and is submitting a petition to the Commission for approval of this proposed divestiture within the 120 day period. On December 21, 2005, Respondent provided to Commission staff the names and contact information of the two potential Acquirers. Respondent also provided Commission staff monthly compliance reports updating Commission staff on the sale process of the Owned Real Property. Respondent recognizes that the Commission needs time to evaluate the proposed divestiture and to allow time for the public comment period. Therefore, Respondent requests that the Commission extend the time for Respondent to divest the Owned Real Property to Commission approved Acquirers from 120 days to 180 days.

4. Respondent began searching for Acquirers of the Owned Real Property in August 2005 prior to having received Commission approval to complete its acquisition of Gambro Healthcare, Inc. Respondent negotiated with ten potential Acquirers during the sale process

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¹ The Owned Real Property consists of four properties: (1) Roseville Dialysis Center, located at 218 Harding Boulevard, Roseville, CA 95678; (2) Gambro Healthcare-Churchland, located at 3204 Churchland Boulevard, Chesapeake, VA 23321; (3) Gambro Healthcare-Portsmouth, located at 311 Goode Way, Portsmouth, VA 23704; and (4) Gambro Healthcare-Clearwater, located at 1124 Lakeview Road, Suite 1, Clearwater, FL 33756.

5. Respondent ultimately agreed to significant price reductions on the properties in order to reach agreement with the Acquirers

[REDACTED]

Respondent finally reached agreement with both Acquirers when Respondent further reduced the purchase prices. Ultimately, Respondent reached agreement with the potential Acquirers by proposing sale prices for three of the properties at substantially reduced rates, resulting in Respondent taking a financial loss on the collective sale of these properties.

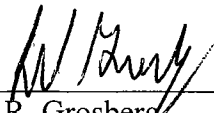
6. Respondent believes that no interim harm will result should the Commission grant an extension of time for the divestiture of the Owned Real Property because the Commission approved leases, currently in place, prevent Respondent from having the ability to harm its tenant Renal Advantage. Prior to recommending the consent package, Commission staff required that Respondent and Gambro enter into a long-term lease with the proposed Acquirer, Renal Advantage. The new Commission-approved leases enable Renal Advantage to rent and continue operating clinics at the Owned Real Property, prevent Respondent from increasing the rent on the Owned Real Property, and prevent Respondent from evicting Renal Advantage or taking any other action that would interfere with Renal Advantage's ability to operate clinics at these properties.

7. Because the delay in closing the divestiture was due to good cause, because the Commission-approved lease in place between Renal Advantage and Respondent prevents any interim harm to the divestitures agreed to under the Consent Agreement, and because the sale of the properties would be consummated immediately upon Commission approval of the potential Acquirers, Respondent respectfully requests that the Commission grant this Petition for Extension of Time.

Accordingly, the undersigned counsel, on behalf of Respondent, respectfully request that the 120 day deadline to obtain the prior approval of the Commission for the sale of the Owned Real Property be extended to 180-days.

Dated: February 1, 2006

Respectfully submitted,



Joel R. Grosberg
McDermott Will & Emery
Counsel for DaVita Inc.