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

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STATE OF CALIFORNIA,

Case No.

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Plaintiff,

FINAL JUDGMENT AND
CONSENT DECREE

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v.

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DAVITA, INC., a Delaware Corporation,
GAMBRO HEALTHCARE, INC., a
20 subsidiary of GAMBRO AB,

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Defendants.

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

1 of this Consent Decree. This Consent Decree does not constitute any evidence against
2 or an admission by any party with respect to any issue of law or fact herein, other than
3 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 U.S.C.
7 § 18), Section 1 of the Sherman Act (15 U.S.C. § 1)), and state Unfair Competition
8 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, viable
18 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 hereto,

24 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
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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 pursuant
20 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 identical,
17 in whole or in part, to medical protocols promulgated by either DaVita or Gambro.

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

23 W. “Effective Date” means the date on which DaVita acquires Gambro
24 Healthcare Inc..

25 X. “Employee Of A Clinic To Be Divested” and “Employee Of The Clinic
26 To Be Divested” mean any individual (including, but not limited to, a clinic director,
27 manager, nurse, technician, clerk, or social worker) who is not a Regional Manager,
28 who is employed by DaVita, by an Acquirer, or by another manager or owner of such

1 Clinic To Be Divested, and who has worked part-time or full-time on the premises of
2 such Clinic To Be Divested at any time since June 1, 2005, regardless of whether the
3 individual has also worked on the premises of any other Clinic.

4 Y. "Excluded Assets" means:

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

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

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

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

1 Clinic To Be Divested.

2 20. Licensed Intangible Property; and

3 21. strategic planning documents that

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

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

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

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

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

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

24 DD. “Lease Of The Owned Real Property” means the Lease Agreement dated
25 September 12, 2005, between Gambro Healthcare, Inc. and RAI Care Centers of
26 Northern California I, LLC for space located at 218 Harding Boulevard, Roseville,
27 California 95678; (This Lease Of The Owned Real Property is included with the Renal
28 Advantage Divestiture Agreements, which are attached as Non-Public Appendix **D** to

1 this Consent Decree.)

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

11 FF. “Management Agreement” and “Management Agreements” mean the
12 South S.F. Clinic Management Agreement and the Colton Clinic Management
13 Agreement.

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

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

28 II. “Operation Of A Clinic” and “Operation Of The Clinic” mean all

1 activities Relating To the business of a Clinic, including, but not limited to:

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

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

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

27 LL. “Owned Real Property” means the Real Property Of The Clinic at the
28 Roseville Dialysis Center, located at 218 Harding Boulevard, Roseville, CA 95678;

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

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

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

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

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

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

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

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

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

28 VV. "Renal Advantage Divestiture Agreements" means the following

1 agreements:

2 1. the Amended and Restated Asset Purchase Agreement dated September
3 12, 2005 by and among Renal Advantage Inc., Gambro Healthcare, Inc., and DaVita
4 Inc.,

5 2. the Transition Services Agreement dated September 12, 2005 between
6 Renal Advantage Inc. and DaVita Inc; and

7 3. the Leases Of The Owned Real Property.

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

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

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

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

15 1. the Amended and Restated Agreement to Provide Management Services
16 to Kidney Dialysis Facilities dated August 31, 1998, between Total Renal Care
17 Holdings, Inc., and Peninsula Nephrology, Inc., and

18 2. any other agreements between DaVita and Peninsula Nephrology Relating
19 To the management of the South S.F. Clinic by DaVita.

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

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

1 has been created for the benefit of any third party and nothing herein shall be construed
2 to provide any rights to third parties.

3 IV.

4 DIVESTITURE OF ASSETS

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

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

9 1. DaVita shall:

10 a. within ten (10) days after the Effective Date, divest to Renal
11 Advantage, absolutely, and in good faith, pursuant to and in
12 accordance with the Renal Advantage Divestiture Agreements, all
13 the Appendix A Clinic Assets;

14 b. The Renal Advantage Divestiture Agreements are incorporated by
15 reference into this Consent Decree and made a part hereof as
16 Non-Public Appendix D. Any failure by DaVita to comply with
17 the Renal Advantage Divestiture Agreements shall constitute a
18 failure to comply with the Consent Decree. The Renal Advantage
19 Divestiture Agreements shall not vary or contradict, or be
20 construed to vary or contradict, the terms of this Consent Decree.
21 Nothing in this Consent Decree shall reduce, or be construed to
22 reduce, any rights or benefits of Renal Advantage, or any
23 obligations of DaVita, under the Renal Advantage Divestiture
24 Agreements.

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

28 i. Consent to immediate entry of an amended Consent Decree

1 before this Court, and if necessary, an Amended Asset
2 Maintenance Agreement, and such other pleadings as
3 warranted. These amended pleadings shall solely reflect the
4 change of circumstances, unless otherwise agreed by the
5 parties in writing; and

- 6 ii. Rescind the Renal Advantage Divestiture Agreements;
- 7 iii. Divest, within six (6) months of the date of Entry of the
8 Amended Consent Decree, the Appendix A Clinic Assets,
9 absolutely and in good faith, at no minimum price, as on-
10 going businesses to an Acquirer or Acquirers that receive
11 the prior approval of the Attorney General and only in a
12 manner that receives the prior approval of the Attorney
13 General, and is authorized by this Court.

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

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

- 28 a. terminate the Colton Clinic Management Agreement, thereby

1 transferring management of the Colton Clinic to the Colton
2 Partnership, and

3 b. divest to the Colton Partnership, absolutely, and in good faith, the
4 Colton Clinic Assets as an on-going business.

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

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

26 5. No later than one hundred twenty (120) days after the date the Consent
27 Decree is signed, Respondent shall divest absolutely, in good faith, and in a manner
28 that receives the prior approval of the Attorney General, the Owned Real Property to

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

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

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

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

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

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

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

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

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

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

26 (1) such third party approval and in assigning the contract
27 to the Acquirer; or

28 (2) a new contract.

- 1 5. DaVita shall:
- 2 a. at the Time Of Divestiture of each Clinic To Be Divested, provide
- 3 to the Acquirer of such Clinic contact information about Payors
- 4 and Suppliers for the Clinic, and
- 5 b. not object to the sharing of Payor and Supplier contract terms
- 6 Relating To the Clinics To Be Divested: (i) if the Payor or Supplier
- 7 consents in writing to such disclosure upon a request by the
- 8 Acquirer, and (ii) if the Acquirer enters into a confidentiality
- 9 agreement with DaVita not to disclose the information to any third
- 10 party;

11 *PROVIDED, HOWEVER*, this Paragraph IV.B.5. does not apply to

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

13 that Clinic.

14 6. Until sixty (60) days after the Time Of Divestiture of each Clinic To Be

15 Divested, DaVita shall:

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

23 *PROVIDED, HOWEVER*, this Paragraph IV.B.6. does not apply to

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

25 that Clinic.

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

27 receives, within sixty (60) days of the Time Of Divestiture of any Clinic at which he

28 or she is employed, an offer of employment from the Acquirer of that Clinic, DaVita

1 shall do the following:

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

26 *PROVIDED, HOWEVER*, this Paragraph IV.B.7. does not apply to
27 the South S.F. Clinic, to the Assets Associated with that Clinic, or to the Acquirer of
28 that Clinic.

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

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

20 a. facilitate interviews between each Regional Manager Of A Clinic
21 To Be Divested and the Acquirer of the Clinic, and shall not
22 discourage such Regional Manager from participating in such
23 interviews; and

24 b. not interfere in employment negotiations between each Regional
25 Manager Of A Clinic To Be Divested and the Acquirer of the
26 Clinic;

27 *PROVIDED, HOWEVER*, the terms of this Paragraph IV.B.9. shall
28 not apply after Acquirers have hired six (6) Regional Managers who were each

1 previously employed by DaVita or Gambro at any time since June 1, 2005;
2 *PROVIDED, FURTHER, HOWEVER*, the terms of this Paragraph IV.B.9. shall not
3 apply to the Westside Clinic, the Colton Clinic, and the South S.F. Clinic, to the Assets
4 Associated with those Clinics, or to the Acquirers of those Clinics.

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

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

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

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

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

26 11. With respect to each Physician who has provided services to a Clinic To
27 Be Divested pursuant to any of the Clinic’s Physician Contracts in effect at any time
28 during the four (4) months preceding the Time Of Divestiture of the Clinic (“Contract

1 Physician”):

- 2 a. DaVita shall not offer any incentive to the Contract Physician, the
3 Contract Physician’s practice group, or other members of the
4 Contract Physician’s practice group to decline to provide services
5 to the Clinic To Be Divested, and shall eliminate any
6 confidentiality restrictions that would prevent the Contract
7 Physician, the Contract Physician’s practice group, or other
8 members of the Contract Physician’s practice group from using or
9 transferring to the Acquirer of the Clinic To Be Divested any
10 information Relating To the Operation Of The Clinic; *PROVIDED,*
11 *HOWEVER,* this Paragraph IV.B.11.a. does not apply to the South
12 S.F. Clinic, to the Assets Associated with that Clinic, or to the
13 Acquirer of that Clinic; and
- 14 b. For a period of three (3) years following the Time Of Divestiture
15 of each Clinic To Be Divested, DaVita shall not contract for the
16 services of the Contract Physician, the Contract Physician’s
17 practice group, or other members of the Contract Physician’s
18 practice group for the provision of Contract Services to be
19 performed in any of the areas listed in Appendix B of this Consent
20 Decree that correspond to such Clinic. *PROVIDED, HOWEVER,*
21 if the Contract Physician, or the Contract Physician’s practice
22 group, or other members of the Contract Physician’s practice group
23 were providing services to a Clinic pursuant to a contract with
24 DaVita or Gambro in effect as of June 1, 2005, then DaVita may
25 contract with such Contract Physicians, or the Contract Physician’s
26 practice group, or other members of the Contract Physician’s
27 practice group for services to be provided to that particular Clinic;
28 *PROVIDED, FURTHER, HOWEVER,* the terms of this Paragraph

1 IV.B.11.b. shall not apply to the Westside Clinic, the Colton
2 Clinic, and the South S.F. Clinic, to the Assets Associated with
3 those Clinics, or to the Acquirers of those Clinics;

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

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

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

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

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

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

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

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

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

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

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

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

11 a. DaVita shall retain a copy of DaVita's Medical Protocols until six
12 (6) months after all of the Assets To Be Divested have been
13 divested, and the Colton Clinic Management Agreement has been
14 terminated, pursuant to this Consent Decree;

15 b. If any Acquirer of a Clinic To Be Divested requests in writing to
16 DaVita, within six (6) months of the Time Of Divestiture of that
17 Clinic to that Acquirer, that DaVita license a copy of DaVita's
18 Medical Protocols to that Acquirer, DaVita shall within five (5)
19 business days of such request, grant to that Acquirer a royalty-free
20 perpetual worldwide license for the use, without any limitation, of
21 DaVita's Medical Protocols (including the right to transfer or
22 sublicense such protocols, exclusively or nonexclusively, to others
23 by any means); and

24 c. DaVita shall create no disincentive for any Acquirer of a Clinic To
25 Be Divested to make such a request for a license for DaVita's
26 Medical Protocols, and shall not enter into any agreement or
27 understanding with any Acquirer that the Acquirer not make such
28 a request.

1 A Clinic located in any of the areas of California listed in Appendix B of this Consent
2 Decree, except to the extent that the contract relates exclusively to:

- 3 1. off-site lab services or social worker support materials; or
- 4 2. billing services, collection services, bookkeeping services, accounting
5 services, supply purchasing and logistics services, or the preparation of financial
6 reports and accounts receivable reports (collectively “Such Services”), where
7 appropriate firewalls and confidentiality agreements are implemented to prevent
8 Material Confidential Information of the Clinic from being disclosed to anyone
9 participating in any way in the operation or management of any Clinic owned by
10 DaVita or any Clinic to which Such Services are being provided.

11
12 The advance written notification shall contain (i) either a detailed term sheet for the
13 proposed acquisition or the proposed agreement with all of the attachments, and (ii)
14 documents that would be responsive to Item 4(c) under the Premerger Notification and
15 Report Form under the Hart-Scott-Rodino Premerger Notification Act, Section 7A
16 of the Clayton Act, 15 USC § 18a, Relating To the proposed transaction (hereinafter
17 referred to as “the Notification”),

18
19 PROVIDED HOWEVER, (i) the Notification is required from DaVita and not from
20 any other party to the transaction. DaVita shall provide the Notification to the
21 Attorney General at least thirty (30) days prior to consummating the transaction
22 (hereinafter referred to as “first waiting period “). If, within the first waiting period,
23 the Attorney General makes a written request for additional information or
24 documentary material, DaVita shall not consummate the transaction until thirty (30)
25 days after submitting the additional information or documentary material. Early
26 termination of the waiting periods in this paragraph may be requested and, where
27 appropriate, granted by letter from the Attorney General.

1 APPOINTMENT OF MONITOR

2 IT IS FURTHER ORDERED that:

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

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

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

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

27 1. The Monitors shall have the power and authority to monitor DaVita's
28 compliance with the terms of this Consent Decree, the Order to Maintain Assets, and

1 of the Divestiture Agreements, and shall exercise such power and authority and carry
2 out the duties and responsibilities of the Monitors in a manner consistent with the
3 purposes of this Consent Decree and in consultation with the Attorney General,
4 including, but not limited to:

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

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

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

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

27 5. The Monitors shall serve, without bond or other security, at the expense
28 of DaVita on such reasonable and customary terms and conditions as the Attorney

1 General may set. The Monitors shall have authority to employ, at the expense of
2 DaVita, such consultants, accountants, attorneys and other representatives and
3 assistants as are reasonably necessary to carry out the Monitors' duties and
4 responsibilities. The Monitors shall account for all expenses incurred, including fees
5 for services rendered, subject to the approval of the Attorney General.

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

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

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

24 9. DaVita may require the Monitors and each of the Monitors' consultants,
25 accountants, attorneys, and other representatives and assistants to sign a customary
26 confidentiality agreement; *PROVIDED, HOWEVER*, such agreement shall not restrict
27 the Monitors from providing any information to the Attorney General.

28 E. The Attorney General may, among other things, require the Monitors and

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

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

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

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

17 VII.

18 APPOINTMENT OF TRUSTEE

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

25 B. In the event that the Attorney General moves for an Order to Appoint a
26 trustee, DaVita shall stipulate to the appointment of a trustee in such action to divest
27 the relevant assets in accordance with the terms of this Consent Decree. Neither the
28 appointment of a trustee nor a decision not to move for the appointment of a trustee

1 under this Paragraph shall preclude the Attorney General from seeking civil penalties
2 or any other relief available to it for any failure by the Defendants to comply with this
3 Consent Decree.

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

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

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

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

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

28 3. Subject to any demonstrated legally recognized privilege, the trustee shall

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

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

21 5. The trustee shall serve, without bond or other security, at the cost and
22 expense of DaVita, on such reasonable and customary terms and conditions as the
23 Attorney General or the court may set. The trustee shall have the authority to employ,
24 at the cost and expense of DaVita, such consultants, accountants, attorneys, investment
25 bankers, business brokers, appraisers, and other representatives and assistants as are
26 necessary to carry out the trustee's duties and responsibilities. The trustee shall account
27 for all monies derived from the divestiture and all expenses incurred. After approval
28 by the Attorney General of the account of the trustee, including fees for the trustee's

1 services, all remaining monies shall be paid at the direction of DaVita, and the trustee's
2 power shall be terminated. The compensation of the trustee shall be based at least in
3 significant part on a commission arrangement contingent on the divestiture of the
4 relevant assets required by this Consent Decree.

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

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

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

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

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

25 G. The Attorney General may on its own initiative, or at the request of the
26 trustee, apply to the Court for such additional orders or directions as may be necessary
27 or appropriate to accomplish the divestiture required by this Consent Decree.

28 H. The trustee appointed pursuant to this Paragraph may be the same Person

1 appointed as the Monitor pursuant to the relevant provisions of this Consent Decree
2 or the Order to Maintain Assets.

3 VIII.

4 ORDER TO MAINTAIN ASSETS

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

9 IX.

10 COMPLIANCE REQUIREMENTS

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

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

26 X.

27 NOTIFICATION OF CHANGE IN LEGAL STATUS

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

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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) business days of entry of this Consent Decree.

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

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XVI.

TERMINATION

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

XVII.

PUBLIC INTEREST

Entry of this Consent Decree is in the public interest.

Dated this ___ day of _____, 2005.

UNITED STATES DISTRICT JUDGE

Presented by:

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

PATRICIA L. NAGLER
Attorneys for the Plaintiff
STATE OF CALIFORNIA

//

DAVITA, INC.

Joseph Schohl
VP, General Counsel and Secretary

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7 GAMBRO HEALTHCARE, INC.
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