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IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

STATE OF CALIFORNIA, Plaintiff, v. DAVITA, INC., a Delaware Corporation, GAMBRO HEALTHCARE, INC., a subsidiary of GAMBRO AB, Defendants.	Case No. COMPLAINT FOR EQUITABLE RELIEF FOR VIOLATIONS OF THE SHERMAN ACT, CLAYTON ACT, AND SUPPLEMENTAL STATE CLAIMS

Plaintiff, State of California, on its own behalf and as *parens patriae* on behalf of its citizens, by and through its Attorney General, Bill Lockyer, brings this civil action to obtain equitable and other relief against the Defendants named herein for violations of the antitrust laws of the United States and of the unfair competition laws of the State of California, and complains and alleges as follows:

I.

JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted under Section 16 of the Clayton Act (15 U.S.C. § 26) to prevent and restrain the violation by Defendants, as hereinafter alleged, of Section 7 of the Clayton Act (15 U.S.C. § 18). This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1337.

2. This complaint is filed and the action is also instituted under Section 1 of the Sherman Act (15 U.S.C. § 1) to prevent and restrain the violation by Defendants, as hereinafter alleged, of Section 1 of the Sherman Act. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1337.

3. This court has supplemental jurisdiction over the claims of Plaintiff arising out of the California Unfair Competition Act, California Bus. & Prof. Code § 17200 et seq. The California Attorney General has jurisdiction to bring such claims pursuant to California Bus. & Prof. Code §§ 17204 and 17206.

4. Venue is proper in the Central District of California under Section 12 of the Clayton Act, 15 U.S.C. § 22, and under 28 U.S.C. section 1391(b) inasmuch as at least one of the Defendants either transacts business, maintains an office, has an agent or is found within this district. Each Defendant is within the jurisdiction of this court for service of this complaint.

5. The violations alleged herein have a substantial effect on interstate commerce. Both DaVita and Gambro have a national presence. Their clinics utilize a substantial volume of goods that flow across interstate lines, including but not limited to medical supplies, and medications.

II.

PLAINTIFF

6. The Attorney General of the State of California is the chief law enforcement officer of the state and as such is empowered to bring this suit on behalf of the state and on behalf of its general economy and natural persons residing in the

state.

III.

DEFENDANTS

7. Defendant DaVita is 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 601 Hawaii Street, El Segundo, CA 90245. Defendant DaVita, among other things, is engaged in the provision and sale of outpatient dialysis services.

8. Defendant DaVita is, and at all times herein has been, engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12.

9. Defendant Gambro is a corporation organized, existing and doing business under and by virtue of the laws of Tennessee, with its office and principal place of business located at 1627 Cole Boulevard, Lakewood, CO 80401. Gambro is an indirect wholly owned subsidiary of Gambro AB, which is a corporation organized, existing and doing business under and by virtue of the laws of Sweden, with its office and principal place of business located at Jakobsgatan 6, SE-103 91, Stockholm, Sweden. Gambro AB is engaged globally in three business fields: operating dialysis centers, manufacturing dialysis equipment, and providing technology and products to blood centers and hospital blood banks. Gambro is Gambro AB's U.S. dialysis services business and is engaged, among other things, in the provision of outpatient dialysis services.

10. Gambro is, and at all times herein has been, engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act as amended, 15 U.S.C. §12.

11. Both Defendants Gambro and DaVita own and operate dialysis clinics throughout California.

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IV.

DEFINITIONS

12. "Dialysis" means filtering a person's blood, inside or outside of the body, to replicate the functions of the kidney.

13. "ESRD" means end stage renal disease, a chronic disease characterized by a near total loss of function of the kidneys, which in healthy people remove toxins and excess fluid from the blood.

14. "Outpatient dialysis services" means all procedures and services related to administering chronic dialysis treatment.

V.

THE PROPOSED ACQUISITION

15. On December 6, 2004, DaVita entered into an agreement ("Purchase Agreement") with Gambro AB to acquire Gambro, for approximately $3.1 billion in cash (the "Acquisition"). The surviving entity is to be called DaVita.

VI.

THE RELEVANT MARKET

16. For the purposes of this Complaint, the relevant line of commerce in which to analyze the effects of the Acquisition is the provision of outpatient dialysis services. Most ESRD patients receive dialysis treatments three times per week in sessions lasting between three and five hours. The only alternative to outpatient dialysis treatments for patients suffering from ESRD is a kidney transplant. However, the wait-time for donor kidneys -- during which ESRD patients must receive dialysis treatments -- can exceed five years. Additionally, many ESRD patients are not viable transplant candidates. As a result, many ESRD patients have no alternative to ongoing dialysis treatments.

17. The relevant geographic market for the provision of dialysis services is defined by the distance ESRD patients are willing and/or able to travel to receive dialysis treatments, and is thus local in nature. Because ESRD patients often suffer

from multiple health problems and may require assistance traveling to and from the dialysis clinic, these patients are unwilling and/or unable to travel long distances to receive dialysis treatment.

18. The relevant geographic markets within which to assess the competitive effects of the proposed merger in California include, but are not necessarily limited to the following areas, or, in the case of the larger metropolitan areas, narrower geographic areas contained therein: (1) Chico; (2) Fairfield; (3) Los Angeles-Orange County; (4) Palm Springs-Palm Desert; (5) Riverside-Pomona-San Bernardino; (6) Sacramento; (7) San Diego; (8) San Francisco-Oakland-San Jose; (9) Stockton.

VII.

THE STRUCTURE OF THE MARKET

19. The market for the provision of outpatient dialysis services is highly concentrated in each of the local areas identified in Paragraph 18 as measured by the Herfindahl-Hirschman Index ("HHI"). The combined firm would have a market share that ranges from 47 to 100 percent in each relevant geographic market. The Acquisition would significantly increase concentration in each relevant market, leaving DaVita as the dominant provider of outpatient dialysis services.

20. DaVita and Gambro are actual and substantial competitors in each of the relevant markets.

21. There are significant barriers to entry into the relevant markets.

22. New entry into the relevant markets sufficient to deter or counteract the anticompetitive effects described in Paragraph 25 is unlikely to occur, and would not occur in a timely manner because it would take more than two years to enter and achieve significant market impact.

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VIII.

FIRST CLAIM FOR RELIEF

23. Plaintiff repeats and realleges paragraphs 1 through 22 hereof.

24. DaVita and Gambro are competitors in the provision of renal dialysis services in California.

25. The effect of the proposed transaction, if consummated, may be substantially to lessen competition in the provision of renal dialysis services in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C.§ 18, in the following ways:

a. eliminating actual, direct, and substantial competition between DaVita and Gambro in the relevant product market and relevant geographic market for the provision of outpatient dialysis services;

b. increasing the ability of the merged entity to unilaterally raise prices of outpatient dialysis services;

c. reducing incentives to improve service or product quality in the relevant markets; and

d. Eliminating Gambro as a substantial and independent competitor in the relevant product market and geographic markets.

26. The merger of DaVita and Gambro, as alleged herein, violates section 7 of the Clayton Act (15 U.S.C. § 18).

IX.

SECOND CLAIM FOR RELIEF

27. Plaintiff repeats and realleges paragraphs 1 through 25 hereof.

28. Such conduct constitutes a contract, combination or conspiracy in restraint of trade in violation of Section 1 of the Sherman Act, 15 U.S.C. §1.

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X.

THIRD CLAIM FOR RELIEF

29. Plaintiff repeats and realleges paragraphs 1 through 26 and 28 hereof.

30. By performing the acts alleged above, defendants and each of them have engaged in and will continue to engage in unfair and unlawful trade practice in violation of the California Unfair Competition Act, California Business and Professions Code § 17200 et seq.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays judgment as follows:

A. That the DaVita-Gambro merger be adjudged to be in violation of Section 7 of the Clayton Act and Section 1 of the Sherman Act and section 17200, et seq. of the California Business and Professions Code;

B. That a preliminary injunction be issued against defendants preventing and restraining each of them, and all other persons acting on their behalf, from taking any action, either directly or indirectly, in furtherance of the proposed merger of DaVita and Gambro and requiring Gambro to hold and operate separately from DaVita all of Gambro's California assets and business pending final adjudication of the merits of this action; and

C. An award of costs of suit, including reasonable attorneys' fees and costs;

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D. That plaintiff have such other and further relief as the Court deems just and proper.

Date: October 4, 2005

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