

FILED
U.S. DIST. COURT
AUGUSTA DIV.

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**IN THE UNITED STATES DISTRICT COURT FOR
SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION**

DAVITA INC., a Delaware corporation.)
and TOTAL RENAL CARE, INC., a California)
corporation authorized to do business in the)
State of Georgia.)

Plaintiffs,)

v.)

NEPHROLOGY ASSOCIATES, P.C., a Georgia)
professional corporation, NEPHROLOGY)
CENTERS OF AMERICA, LLC, a Georgia)
limited liability corporation, DONALD)
WILLIAMSON, M.D., individually, MARK)
SMITH, M.D., individually, ALAN LAVINE,)
M.D., individually, and CLAY WILSON,)
M.D., individually.)

Defendants.)

4 does depend on

Case No. _____

submitted set of documents

**VERIFIED COMPLAINT FOR
INJUNCTIVE RELIEF AND MONEY DAMAGES**

Plaintiffs, DaVita Inc. and Total Renal Care, Inc. (collectively "TRC"), by their attorneys, Glover, Blount & Millians and McDermott, Will & Emery, for their Verified Complaint against Defendants Nephrology Associates, P.C., Nephrology Centers of America, LLC, Donald Williamson, M.D., Mark Smith, M.D., Alan LaVine, M.D. and Clay Wilson, M.D., complain and state as follows:

THE NATURE OF THIS CASE

1. Doctors should act in the best interests of their patients. It is in a patient's best interests to choose their healthcare provider free from financial inducements or other improper influences.

1.

2. This case arises out of Defendants' violation of these two fundamental propositions by treating patients as commodities -- commodities who serve no purpose in the Defendants' minds but to line their pockets.

3. Defendants' most recent bad acts involved their bullying and coercing of TRC's dialysis patients to transfer from TRC's South Augusta facility to Defendants' recently opened and competing facility. Specifically, Defendants actually succeeded in coercing a majority of TRC's long-term patients to switch to Defendants' facility by making material misrepresentations and omissions to the patients, and by employing a variety of high pressure and other repugnant tactics. (Stone Aff. Copies of all affidavits are attached at Exhibit H.) One such tactic included one of the Defendant doctors leaving a voicemail message for a patient at his home whom that doctor knew was awaiting a kidney transplant. The doctor left a message stating that he had "fabulous news" for the patient and that the patient needed to call him back immediately. The patient was devastated when he called the doctor back and learned that the "fabulous news" was that the Defendants were opening a new dialysis facility which they then pressured him to transfer to. (Barton Aff.) Defendants and their staff also pressured another TRC dialysis patient by calling him four times about his transferring to their facility -- three of such calls being made in one hour and an additional call being made at 10:00 p.m. (Tolbert Aff.)

4. Sadly, these are but two examples of the Defendants' wrongful conduct which has caused substantial damage and irreparable harm to both TRC's dialysis patients and to TRC's business.

DISTRICT COURT, COUNTY OF PUEBLO, STATE OF COLORADO Pueblo County Judicial Building 320 W. 10th St. Pueblo, CO 81003 (719) 583-7000	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
Plaintiff: <p style="text-align: center;">DAVITA INC.</p> v. Defendant: <p style="text-align: center;">DIANE ODELL</p>	
Attorneys for Plaintiff Mary L. Will, #20030 Kathrin H. Weston, #36728 PERKINS COIE LLP 1899 Wynkoop Street, Suite 700 Denver, CO 80202-1043 Phone: 303.291.2300 Facsimile: 303.291.2400 Email: MWill@perkinscoie.com KWalsh@perkinscoie.com	<p style="text-align: center;">COMPLAINT FOR PERMANENT INJUNCTIVE RELIEF, DAMAGES, AND OTHER RELIEF</p>

Plaintiff DaVita Inc. ("DaVita"), by and through its attorneys, Perkins Coie LLP, for its Complaint against Defendant Diane Odell ("Odell") states as follows:

Nature of the Action

1. This civil action is brought by DaVita against Odell to enforce Odell's Employment Agreement (the "Agreement") with DaVita in which Odell agreed, among other things, that she (a) would not work for a competitor of DaVita during her employment with DaVita or for a six month period after the end of her employment with DaVita, (b) would not solicit DaVita employees during her employment with DaVita or for a two year period after the end of her employment with DaVita, and (c) would hold DaVita's valuable proprietary and

confidential information in trust and confidence. Odell terminated her employment with DaVita on November 8, 2008, and thereafter commenced employment with one of DaVita's competitors, Liberty Dialysis ("Liberty"). Odell's employment with Liberty is in violation of her Agreement. Odell's actions are causing, and will in the immediate future continue to cause, irreparable harm to DaVita.

Parties

2. DaVita is a Delaware corporation with outpatient dialysis facilities across the country. DaVita provides dialysis services for individuals diagnosed with chronic kidney failure, is located in 43 states and the District of Columbia, and serves approximately 110,000 patients.

3. Odell is an adult individual residing in Colorado. Odell is a former employee of DaVita, and currently works as a Registered Nurse for DaVita's competitor, Liberty.

Jurisdiction and Venue

4. This Court has original subject matter jurisdiction over this action.

5. Personal jurisdiction and venue are proper in this Court, in that Odell resides in this district and the events giving rise to the claims asserted herein occurred and are occurring in this district.

General Allegations

6. Liberty is one of the largest providers of dialysis services in the United States. It has over 70 clinics in 18 states and is opening clinics in other states, including in Colorado. Upon information and belief, Liberty has opened a clinic in Pueblo, Colorado, and plans to open three clinics in Colorado Springs, Colorado, and one clinic in Castle Rock, Colorado.

7. Liberty is a direct competitor of DaVita.

8. During the last several weeks, Liberty has hired numerous DaVita employees to staff its Colorado facilities, many of whom, like Odell, have agreements with DaVita which prohibit them from working for Liberty for a six month period after the end of their employment with DaVita.

9. Upon information and belief, Liberty informed various DaVita employees, including Odell, that it would pay their attorneys' fees and other costs if they accepted employment with Liberty and DaVita brought a legal action against them as a result.

10. Upon information and belief, Liberty selected Odell's legal counsel in this case.

11. Upon information and belief, Liberty is paying all or part of Odell's legal counsel's fees in this case.

1 Plaintiffs DaVita Inc., Total Renal Care, Inc., Renal Treatment Centers – West,
2 Inc. (collectively, “DaVita”) for their Complaint for Damages and Declaratory and
3 Injunctive Relief against Lori LeBlanc (“LeBlanc”), allege as follows:
4

5 NATURE OF THE CASE

6 1. DaVita brings this complaint because LeBlanc, as Chief Executive Officer
7 for a Las Vegas physician group, gained access to DaVita’s confidential, trade secret
8 business information and then misused that information to DaVita’s detriment on behalf
9 of another physician group in Washoe County. DaVita is informed and believes and
10 thereupon alleges that LeBlanc is the Chief Executive Officer of two separate physician
11 groups located in Las Vegas and Washoe County, Nevada. The Las Vegas physician
12 group provides medical director services for certain of DaVita’s dialysis centers pursuant
13 to four written Medical Director Agreements. In those Medical Director Agreements, the
14 Las Vegas physician group bound itself and LeBlanc to keep confidential DaVita’s
15 proprietary business information, specifically including the compensation terms under the
16 Agreements. LeBlanc, however, recently used the compensation arrangement under the
17 Las Vegas Agreements on behalf of the Washoe County physician group. DaVita also is
18 informed and believes and thereupon alleges that LeBlanc recently disclosed this and
19 other of its confidential and trade secret business information to competing dialysis
20 services provider Liberty Dialysis, LLC. Finally, DaVita is informed and believes and
21 thereupon alleges that LeBlanc recently slandered DaVita by disparaging its business
22 practices to the attendees of a Renal Leadership Conference. This misappropriation of
23 DaVita’s trade secrets, breach of confidentiality, interference with economic advantage,
24 and defamation *per se* has and threatens to continue to irreparably harm DaVita and
25 DaVita is entitled to damages and injunctive and declaratory relief.

26 PARTIES

27 2. Defendant Lori LeBlanc is an individual who, on information and belief,
28 resides in Washoe County, Nevada. On information and belief, LeBlanc serves as the

**PURSUANT TO THE COMMERCIAL ARBITRATION RULES
OF THE AMERICAN ARBITRATION ASSOCIATION,
CITY OF DENVER, COLORADO**

TOTAL RENAL CARE, INC. and
SOUTHERN COLORADO JOINT VENTURES, LLC

Claimants,

v.

PIKES PEAK NEPHROLOGY ASSOCIATES, P.C.,
BRAD H. YUAN, M.D.,
STEPHEN FOX, M.D.,
MELINDA L. HOCKENSMITH, M.D.,
ROGER L. MALLORY, M.D.,
GEORGE A. DEVAULT, JR., M.D., and
JESSE A. FLAXENBURG, M.D.,

Respondents.

ARBITRATION DEMAND

Plaintiffs Total Renal Care, Inc. and Southern Colorado Joint Ventures, LLC ("Plaintiffs" or "TRC"), through their undersigned counsel, for their arbitration demand against defendants Pikes Peak Nephrology Associates, P.C. ("PPNA"), Brad H. Yuan, M.D., Stephen Fox, M.D., Melinda L. Hockensmith, M.D., Roger L. Mallory, M.D., George A. DeVault, Jr., M.D., and Jesse A. Flaxenburg, M.D. (collectively, "Physicians"; together with PPNA, the "PPNA Defendants"), hereby allege as follows:

NATURE OF THE CASE

1. Total Renal Care, Inc., a company which provides dialysis services to patients who suffer from renal failure, brings this action on its own behalf and on behalf of Southern

Colorado Joint Ventures, LLC against a group of renal physicians (the PPNA Defendants) because they are breaching their legal obligations to TRC. On June 30, 1998, TRC entered into agreements with certain of the PPNA Defendants in which TRC agreed to pay the PPNA Defendants millions of dollars to acquire the assets of their dialysis center and for them to act as the medical directors of two dialysis centers (the International Circle and E. LaSalle dialysis centers) in the Colorado Springs area for a 10-year period. In July 2003, TRC paid the PPNA Defendants an additional Two Hundred Fifty Thousand Dollars (\$250,000.00) to extend the non-competition period of those agreements by an additional year. On April 1, 2005 and March 24, 2006, TRC agreed to pay the PPNA Defendants additional millions of dollars and for them to act as the medical directors of two more dialysis centers (the Alamosa and Fountain dialysis centers) for new 10-year periods. In return for these significant investments, the PPNA Defendants made various commitments to TRC. Specifically, among other things, the PPNA Defendants agreed not to solicit TRC patients or employees; to keep proprietary information and trade secrets of TRC confidential, and not to criticize, disparage, or denigrate TRC. Despite these unambiguous obligations, the PPNA Defendants engaged in a secret campaign to mislead TRC and egregiously breach each of these obligations.

2. Specifically, TRC is informed, believes, and thereupon alleges that, since at least July 2008, the PPNA Defendants have worked to establish dialysis centers in competition with TRC, some within the non-compete areas around the TRC dialysis centers, at the following locations: 2180 Hollow Brook Drive, Colorado Springs, CO 80918; 2508 Airport Rd, Colorado Springs, CO 80910; 2002 Lelaray Street, Colorado Springs, CO 80909; 4318 Trail Boss Drive, Castle Rock, CO 80104; and 850 E Eagle Ridge Blvd, Pueblo, CO 81008. All the while, the PPNA Defendants concealed these facts from TRC, even specifically denying any such agreements or competition in letters dated September 3 and December 18, 2008.

3. Moreover, TRC is informed, believes, and thereupon alleges that the PPNA Defendants wrongfully provided to a TRC competitor access to confidential information of TRC

to use in competition with TRC and spread actionable rumors about TRC management. All of this was part of the PPNA Defendants' organized effort to convince TRC employees to terminate their employment with TRC and to convince TRC patients to terminate their use of TRC services.

4. TRC therefore brings this arbitration demand alleging breach of contract.

THE PARTIES

5. Plaintiff TRC owns and operates dialysis centers in Colorado, including the Colorado Springs area. TRC is a wholly-owned subsidiary of DaVita Inc., a NYSE publicly-traded company. DaVita Inc. owns numerous operating subsidiaries throughout the United States, which in turn own and operate free-standing dialysis centers. TRC is a corporation duly incorporated under the laws of the State of California with its principal place of business located at 601 Hawaii Street, El Segundo, California 90245.

6. Plaintiff Southern Colorado Joint Ventures, LLC owns the dialysis center located at 6910 Bandle Drive, Fountain, Colorado 80817. TRC is the majority owner of Southern Colorado Joint Ventures, LLC and manages the dialysis center for it. The Southern Colorado Joint Venture agreement empowers TRC to sue on behalf of Southern Colorado Joint Ventures, LLC. As used herein, the term "TRC" is intended to encompass Southern Colorado Joint Ventures, LLC.

7. TRC is informed and believes that Defendant PPNA is a professional corporation that provides medical services in the Colorado Springs area. PPNA is a professional corporation duly incorporated under the laws of the State of Colorado with its principal place of business located at 2130 E. La Salle, Colorado Springs, Colorado 80909.

8. TRC is informed and believes that Defendant Brad H. Yuan, M.D. is an employee and partial owner of PPNA. Defendant Yuan is an individual residing in the State of Colorado.

within the state that have caused injury within this state; and or (c) regularly solicits business within the State of Idaho.

14. This Court has jurisdiction over Liberty Pocatello pursuant to Idaho's so-called Long Arm Statute, Idaho Code § 5-514, in that Liberty Pocatello, on its own behalf and by its agents and employees: (a) transacts business within the State of Idaho; (b) has committed tortious acts within the state that have caused injury within this state; and or (c) regularly solicits business within the State of Idaho.

15. Upon information and belief, both Liberty and Liberty Pocatello consider themselves direct competitors of Plaintiff Gate City Dialysis in the provision of dialysis services in the area and they, therefore, consider themselves to transact business within the State of Idaho, and, consistent with that belief, they both hold themselves out to the general public in Idaho as providing such services and/or conducting business in the State of Idaho.

FACTS COMMON TO ALL CLAIMS

16. Plaintiff Gate City Dialysis, with offices in Pocatello, Idaho, has provided kidney dialysis services for individuals diagnosed with chronic kidney failure in the Pocatello, Burley and Twin Falls, Idaho area since November 1999.

17. The Pocatello facility operated by Plaintiff Gate City Dialysis operates in direct competition with the facilities owned and operated by the Defendants, which also provide kidney dialysis services for individuals in the Pocatello, Idaho area.

18. In November 1999, the predecessor to Total Renal Care, Inc., d/b/a Gate City Dialysis, Portneuf Nephrology Center, LLC, entered into a contract with Bannock Regional Medical Center, wherein Total Renal Care, Inc. agreed to provide acute kidney dialysis services to inpatients of Bannock Regional Medical Center, which is now known as Portneuf Medical Center ("PMC") located in Pocatello, Idaho.

19. In May 2007, PMC's Executive Vice President and COO, Callen K. Northam, sent a letter to Gate City Dialysis' parent, DaVita, Inc., advising that PMC was terminating

its contract with Gate City Dialysis, effective August 21, 2007, without any explanation for the termination.

20. Sometime prior to the contract's termination in August 2007, Plaintiff's learned from several sources that Defendants Drs. Fahim Rahim and Naeem Rahim, both in their personal capacity and as partners of Defendant Idaho Kidney Institute, and Dr. Fahim Rahim as medical director for Defendant Idaho Kidney Center, on their own and by way of authorized agents or employees, had been advising Gate City Dialysis' patients and other caregivers in the community that Gate City Dialysis' clinics would be closing soon and that Gate City Dialysis did not have a medical director to oversee the care provided at its centers. These statements made by Defendants (and/or their agents or employees) were completely false and unfounded.

21. Plaintiff Dr. Narasimhan was the Medical Director for Gate City Dialysis' clinics at that time, and had been serving in this capacity since September 1, 2007.

22. In February 2007, two Gate City Dialysis employees overheard Dr. Rahim advise an existing patient of Gate City Dialysis, who had recently been admitted to PMC, that Gate City Dialysis was "getting scary" and had no nephrology coverage, therefore, the patient should transfer his care to the Idaho Kidney Institute.

23. The factual statement that Gate City Dialysis had no nephrology coverage at that time was simply not true. When the two Gate City Dialysis employees attempted to visit this patient in the hospital at PMC, Dr. Rahim ordered them to leave the patient's room.

24. Within the next day or two, a registered nurse with Gate City Dialysis, on her day off from work, attempted to visit the same Gate City Dialysis patient mentioned above while the patient was still in the hospital.

25. One of the PMC nurses, however, advised the Gate City Dialysis nurse that Dr. Rahim had left orders with PMC's nursing staff that no one from Gate City Dialysis should be allowed to visit this dialysis patient.

26. When the Gate City Dialysis nurse eventually visited with the patient, the patient advised her that the PMC nurses had previously posted a sign on his door that stated that all visitors needed to check with the nursing staff before entering his room, that this had made the patient upset and the patient had torn the sign off the door.

27. Upon information and belief, in August 2007, PMC entered into an exclusive contract with Defendants, which contract presently remains in effect, in which Defendants agreed to serve, and continue to presently serve, as the exclusive provider of acute kidney dialysis services to all inpatients at PMC who are in need of such services.

28. In November 2007, Plaintiffs were advised that a Gate City Dialysis patient had been contacted by Dr. Naeem Rahim's secretary, who advised the patient that he had a follow-up appointment scheduled with Dr. Naeem Rahim after the patient's recent stay at PMC.

29. According to this patient, during his follow-up appointment with Dr. Naeem Rahim, Dr. Naeem Rahim told the patient that Gate City Dialysis was killing his kidneys by having the patient's kidneys dialyzed three times a week, rather than twice a week.

30. This patient also advised Plaintiffs that he was told by Dr. Fahim Rahim that the nurses at Gate City Dialysis did not know what they were doing and that the patient should attend the Idaho Kidney Institute instead. These factual statements concerning Plaintiffs' dialysis services are false and without foundation.

31. Defendants' pattern of communicating fabrications and mistruths regarding Plaintiffs' dialysis operations in the Pocatello, Idaho area continued, requiring DaVita, Inc.'s Divisional Vice President, Richard Turner, to send a letter to both Drs. Rahim in late August 2007, insisting that Defendants stop engaging in their reckless and damaging conduct immediately.

32. Upon information and belief, despite Plaintiffs' demands, Defendants (on their own and by their agents or employees) have continued to engage in communicating

fabrications and mistruths about Plaintiffs to not only Plaintiffs' patients, but also potential future patients of Plaintiffs and other caregivers in the community.

33. Indeed, another Gate City Dialysis patient recently advised Plaintiffs that on December 17, 2007, during a visit she received from Dr. Rahim while she was admitted to PMC, Dr. Rahim told her that, if she had come to the Idaho Kidney Institute, instead of Gate City Dialysis, she would have received a kidney transplant by now because he personally knew the individual in charge of the kidney transplant team.

34. Dr. Rahim also apparently advised this patient that, if she transferred her care to Idaho Kidney Institute, she would not have to deal with nurses and social workers like she is now, due to the fact of not having a physician present at all times.

35. The statement implying that Gate City Dialysis does not have a physician available for its patients is, again, false, and the unqualified statement that, had this patient been with Idaho Kidney Institute instead of Gate City Dialysis, she would have had a kidney transplant by now is false and misleading and, therefore, unethical and unprofessional pursuant to Idaho Code §§ 54-1814(4) and 54-1814(22) ("Grounds for Medical Discipline") and Idaho Administrative Code §§ 22.01.01.101(01) and (04) ("Additional Grounds for Suspension, Revocation or Disciplinary Sanctions") to the extent it constitutes a unconditional promise that a patient will receive certain medical care and assistance, which a doctor cannot or should not guarantee.

36. In January 2008, Plaintiffs were advised of further false and defamatory communications by Defendants to patients of Dr. Narasimhan and Gate City Dialysis regarding the quality of care the patients receive at Gate City Dialysis.

37. One patient reports that Dr. Rahim informed the patient that the patient runs the risk of increased infections by receiving dialysis treatment at Gate City Dialysis because, as Dr. Rahim explained, Gate City Dialysis "re-uses dialyzers" and uses the "same [dialyzer]

filter over and over." Dr. Rahim advised the patient that this patient could "avoid any further infections" by using "a new filter every time" the patient receives treatment.

38. These factual statements by Defendants are false and misleading, and are intended to disparage Plaintiffs and the care they provide. The statements are likewise aimed at leaving a false impression and preying on unfounded fears that the use of medically approved and appropriate multi-use dialyzers entails a risk of patient infection that single-use dialyzers avoid.

39. In a similar vein, in communications with patients of Dr. Narasimhan and Gate City Dialysis, Defendants (and/or their agents and employees) have disparaged and defamed Plaintiffs by falsely stating that Plaintiffs re-use intravenous saline solution materials contrary to industry practice and in violation of applicable medical standards.

40. Finally, as recently as January 11, 2008, Defendants (and/or their agents and employees) falsely and with an intent to defame and disparage Plaintiffs, informed a patient who had requested to have her records transferred from Idaho Kidney Institute to Gate City Dialysis that Plaintiffs "will compromise her health" and that Gate City Dialysis "does not have a physician and if she were ever hospitalized she would become [Idaho Kidney Institute's] patient anyway."

41. Upon information and belief, Defendants have engaged in the wrongful conduct identified above with the intent and purpose of slandering, defaming, and otherwise harming Plaintiffs' professional reputation, in an attempt to gain an unfair competitive advantage, and in the hopes of, eventually, squeezing Plaintiffs out of the medical community and dialysis market in Pocatello, Idaho.

42. When Defendants published the false and defamatory statements identified in Paragraphs 20, 22, 29-30, 33-34, 37 and 39-40, Defendants knew the statements were false, or they reasonably should have known that the statements were false, or, at a minimum,

Defendants published the statements with a reckless disregard for the truth or falsity of the statements.

43. Defendants were not privileged in publishing these false statements concerning Plaintiffs, nor did they have any justifiable motive or basis to publish these false statements.

44. As a natural and proximate result of Defendants' defamatory statements, Plaintiffs' professional reputations, and Dr. Narasimhan's personal reputation, have been injured.

45. Defendants' defamatory statements have diminished the esteem, respect, good will and confidence Plaintiffs have enjoyed as respected caregivers in the community.

46. In addition, these defamatory statements have been a source of great embarrassment and humiliation to Dr. Narasimhan, causing him to suffer mental anguish.

47. As a natural and proximate result of Defendants' wrongful conduct, Plaintiffs' business relationships with their existing patients, and Plaintiffs' ability to establish business relationships with potential future patients, have been adversely impacted.

48. As evidenced by Defendants' wrongful conduct outline above, Defendants have attempted to leverage their position as the exclusive provider of acute kidney dialysis services at PMC in order to preclude Plaintiffs from providing any competing dialysis services to Plaintiffs' existing or future patients and in an attempt to monopolize the provision of acute kidney dialysis services provided in the surrounding community.

49. Statements made by agents or employees of Defendants have been made at the direction of, with the authorization, consent, and approval of, and in the scope and course of their duties as employees or agents of Defendants Idaho Kidney Institute, Idaho Kidney Center, Liberty, Liberty Pocatello and the individual Defendants. In addition, each of the named Defendants acted in concert with one another when engaging in the misconduct

outlined above, where said misconduct was engaged in with the knowledge, consent and approval of each of the named Defendants.

COUNT ONE
Slander and Slander Per Se

50. Plaintiffs repeat and incorporate by this reference each and every allegation set forth in paragraphs 1 through 49, inclusive.

51. The oral statements made by Defendants (and/or their agents or employees) set forth in Paragraphs 20, 22, 29-30, 33-34, 37 and 39-40 above are false and defamatory and, therefore, constitute slander and slander per se because, on their face, they prejudice the business reputation of Plaintiff Gate City Dialysis and the reputation of Plaintiff Dr. Narasimhan, both personally and in his occupation as Medical Director of Gate City Dialysis, to the extent that the defamatory statements suggest that Dr. Narasimhan and his staff and colleagues at Gate City Dialysis are unfit and incompetent, or that they have a criminal intent to harm their patients.

52. Defendants (and/or their agents or employees) published the defamatory statements set forth in Paragraphs 20, 22, 29-30, 33-34, 37 and 39-40 in bad faith since they knew the statements were false when they made them, or they reasonably should have known that the statements were false when they made them, or, at a minimum, Defendants published the statements with a reckless disregard for the truth or falsity of the statements.

53. As the natural and proximate cause of Defendants' wrongful conduct, not only has the professional reputations of Plaintiffs been substantially harmed, but Plaintiffs have also suffered a loss of business and Dr. Narasimhan, personally, has suffered mental anguish.

54. To this extent, Plaintiffs have suffered damages in an amount to be proven at trial, which amount exceeds \$10,000.00.

JURISDICTION AND VENUE

17. This Court has jurisdiction over the above-captioned action pursuant to Utah Code Ann. § 78-3-4(1).

18. Venue is proper in this Court pursuant to Utah Code Ann. § 78-13-7 in that at least one defendant resides in Salt Lake County, Utah, and the claims at issue herein arose in Salt Lake County, Utah.

GENERAL ALLEGATIONS

19. The gravamen of this dispute centers on Dr. Stinson and the other Defendants' concerted efforts to "run DaVita [Plaintiffs' affiliated company] out of business" in Salt Lake City, Utah. The Defendants are attempting to complete this objective by various unlawful means, including direct breaches of written non-solicitation agreements, solicitation of Plaintiffs' employees and patients, defamation of Plaintiffs' business practices, wrongful dissemination of Plaintiffs' confidential information, and a systematic effort to transfer patients out of Plaintiffs' dialysis centers.

20. In furtherance of their objectives, Dr. Stinson and his Nephrology Associates have formed a secret agreement with certain of the defendants, including Oquirrh, one of the Plaintiffs' competitors in the provision of dialysis services in Salt Lake City, to oust Plaintiffs from the Salt Lake City market. The defendants' joint plan is gradually to steal all of Plaintiffs' patients under the guise of "medically necessary transfers" or by secret and/or unlawful patient solicitations to make it look like patients are transferring dialysis facilities of their own free will, when in fact they are not.

I. THE CONTRACTUAL NON-COMPETITION AND NON-SOLICITATION

NATURE OF THE CASE

1. The Western Nephrology Defendants are breaching both the letter and spirit of their contractual obligations to TRC. On June 30, 1998, TRC paid millions to certain of the Western Nephrology Defendants and entered into a series of agreements with them to act as the medical directors of six dialysis centers in the Denver metropolitan area for a 10-year period. In return for this significant investment, the Western Nephrology Defendants made various promises to TRC. These promises included a promise not to engage in certain competition against TRC; a promise to engage TRC in negotiations in good faith; a promise not to engage in negotiations with others without TRC; a promise to not solicit TRC employees; and a promise to keep proprietary information and trade secrets of TRC confidential. Despite these unambiguous obligations, the Western Nephrology Defendants have engaged in a secret campaign with ARA to mislead TRC and egregiously breach each of these obligations. TRC recently discovered that the Western Nephrology Defendants have been working with ARA, one of TRC's competitors, for a number of months to establish dialysis centers that will directly compete with TRC's centers. The ARA centers will be well within the non-competition restrictions in the parties' contracts. Four of the centers are within three and a half miles of existing TRC centers. All the while, the Western Nephrology Defendants have been concealing these facts from TRC and feigning negotiations for a renewal of their 1998 agreement with TRC. ARA was fully aware that the Western Nephrology Defendants were under contract with TRC; nevertheless, it intentionally interfered with that relationship. As a result of this conduct, TRC is entitled to damages and an injunction (both preliminary and permanent) against the Western Nephrology Defendants and ARA ("Defendants").

THE PARTIES

2. Plaintiff TRC owns and operates dialysis centers in the Colorado and the Denver metropolitan area. TRC is a wholly-owned subsidiary of DaVita Inc., a NYSE publicly-traded company. DaVita Inc. owns numerous operating subsidiaries throughout the United