

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Jon Leibowitz, Chairman**
 J. Thomas Rosch
 Edith Ramirez
 Julie Brill

In the Matter of

**FRESENIUS MEDICAL CARE AG &
CO. KGaA,**
a partnership limited by shares.

File No. 111 0170

AGREEMENT CONTAINING CONSENT ORDERS

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by Fresenius Medical Care AG & Co. KGaA (hereinafter “Proposed Respondent”) of Liberty Dialysis Holding, Inc. (“Liberty”), and it now appearing that Proposed Respondent is willing to enter into this Agreement Containing Consent Orders (“Consent Agreement”) to divest certain assets and providing for other relief:

IT IS HEREBY AGREED by and between Proposed Respondent, by its duly authorized officers and attorneys, and counsel for the Commission that:

1. Proposed Respondent Fresenius Medical Care AG & Co. KGaA is a partnership limited by shares organized, existing and doing business under and by virtue of the laws of the Federal Republic of Germany, with its office and principal place of business located at Else-Kröner-Straße 1, 61352 Bad Homburg, Germany. Fresenius Medical Care AG & Co. KGaA is the parent of Fresenius Medical Care Holdings, Inc., a New York corporation, d/b/a Fresenius Medical Care North America (“FMCNA”) with its office and principal place of business located at 920 Winter St., Waltham, MA 02451-1457.
2. Proposed Respondent admits all the jurisdictional facts set forth in the draft of Complaint here attached.
3. Proposed Respondent waives:
 - a. any further procedural steps;

- b. the requirement that the Commission's Decision and Order and Order to Hold Separate and Maintain Assets, both of which are attached hereto and made a part hereof, contain a statement of findings of fact and conclusions of law;
 - c. all rights to seek judicial review or otherwise to challenge or contest the validity of the Decision and Order or the Order to Hold Separate and Maintain Assets entered pursuant to this Consent Agreement; and
 - d. any claim under the Equal Access to Justice Act.
4. Because there may be interim competitive harm, the Commission may issue its Complaint and the Order to Hold Separate and Maintain Assets in this matter at any time after it accepts the Consent Agreement for public comment.
5. Not later than thirty (30) days after the date this Consent Agreement is signed by the Proposed Respondent, Proposed Respondent shall submit an initial report, pursuant to Section 2.33 of the Commission's Rules, 16 C.F.R. § 2.33. Proposed Respondent shall submit subsequent reports every thirty (30) days thereafter until the Order to Hold Separate and Maintain Assets becomes final. Each compliance report submitted shall describe in detail the manner in which Proposed Respondent has complied, is complying and will comply with the Consent Agreement, the Order to Hold Separate and Maintain Assets and the Decision and Order. In addition, each report shall provide sufficient information and documentation to enable the Commission to determine independently whether the Proposed Respondent is in compliance with this Consent Agreement and each of the Orders.
6. Each report submitted pursuant to paragraph 5 above shall be verified by a notarized signature or sworn statement, or be self-verified in the manner set forth in 28 U.S.C. §1746. Section 2.41(a) of the Commission's Rules of Practice requires that an original and two copies of all compliance reports be filed with the Commission. Proposed Respondent shall file an original report and one copy with the Secretary of the Commission, and shall send one copy directly to the Bureau of Competition's Compliance Division. In addition, Proposed Respondent shall provide a copy of each report to the Monitor appointed by the Order to Hold Separate and Maintain Assets.
7. This Consent Agreement, and any compliance reports filed pursuant to this Consent Agreement, shall not become part of the public record of the proceeding unless and until the Consent Agreement is accepted by the Commission. If accepted by the Commission, this Consent Agreement, together with the draft of Complaint, will be placed on the public record for a period of thirty (30) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Consent Agreement and so notify Proposed Respondent, in which event it will take such action as it may consider appropriate, or issue or amend its Complaint (in such form as the circumstances may require) and issue its Decision and Order, in disposition of the proceeding.

8. This Consent Agreement is for settlement purposes only and does not constitute an admission by Proposed Respondent that the law has been violated as alleged in the draft of Complaint here attached, or that the facts as alleged in the draft Complaint, other than jurisdictional facts, are true.
9. This Consent Agreement contemplates that, if it is accepted by the Commission, the Commission may (a) issue and serve its Complaint corresponding in form and substance with the draft of Complaint here attached, (b) issue and serve its Order to Hold Separate and Maintain Assets, and (c) make information public with respect thereto. If such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission may, without further notice to Proposed Respondent, issue the attached Decision and Order containing an order to divest and providing for other relief in disposition of the proceeding.
10. When final, the Decision and Order and the Order to Hold Separate and Maintain Assets shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Decision and Order and the Order to Hold Separate and Maintain Assets shall become final upon service. Delivery of the Complaint, the Decision and Order, and the Order to Hold Separate and Maintain Assets to Proposed Respondent by any means provided in Commission Rule 4.4(a), 16 C.F.R. § 4.4(a) – including, but not limited to, delivery to any office within the United States of Katherine I. Funk, of Baker & McKenzie LLP; or of any other lawyer or law firm listed as Counsel for Proposed Respondent on this Consent Agreement – shall constitute service as to Proposed Respondent. Proposed Respondent waives any right it may have to any other manner of service. Proposed Respondent also waives any right it may otherwise have to service of any Appendices incorporated by reference into the Decision and Order or the Order to Hold Separate and Maintain Assets, and agrees that it is bound to comply with and will comply with the Decision and Order and the Order to Hold Separate and Maintain Assets to the same extent as if it had been served with copies of the Appendices, where Proposed Respondent is already in possession of copies of such Appendices.
11. The Complaint may be used in construing the terms of the Decision and Order and the Order to Hold Separate and Maintain Assets, and no agreement, understanding, representation, or interpretation not contained in the Decision and Order, the Order to Hold Separate and Maintain Assets, or the Consent Agreement may be used to limit or contradict the terms of the Decision and Order or the Order to Hold Separate and Maintain Assets.
12. By signing this Consent Agreement, Proposed Respondent represents and warrants that it can accomplish the full relief contemplated by the attached Decision and Order (including effectuating all required divestitures, assignments, transfers) and the Order to Hold Separate and Maintain Assets and that all parents, subsidiaries, affiliates, and successors necessary to effectuate the full relief contemplated by this Consent Agreement

are: (1) within the control of the party to this Consent Agreement, or (2) will be in the control of the party to this Consent Agreement after the proposed acquisition.

13. Proposed Respondent agrees that it shall interpret each Divestiture Agreement under the Decision and Order in a manner that is fully consistent with all of the relevant provisions and remedial purposes of the Decision and Order and the Order to Hold Separate and Maintain Assets.
14. Proposed Respondent has read the draft of Complaint, the Decision and Order, and the Order to Hold Separate and Maintain Assets contained in this Consent Agreement. Proposed Respondent understands that once the Decision and Order and the Order to Hold Separate and Maintain Assets have been issued, Proposed Respondent will be required to file one or more compliance reports showing that it has fully complied with the Decision and Order and the Order to Hold Separate and Maintain Assets.
15. Proposed Respondent agrees to comply with the terms of the proposed Decision and Order and the Order to Hold Separate and Maintain Assets from the date it signs this Consent Agreement. Proposed Respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Decision and Order or of the Order to Hold Separate and Maintain Assets after each becomes final.

**FRESENIUS MEDICAL CARE AG & CO.
KGaA**

FEDERAL TRADE COMMISSION

By: _____
Dr. Ben J. Lipps
Chief Executive Officer and
Chairman of the Management Board of
Fresenius Medical Care Management AG,
the General Partner of Fresenius Medical
Care Management AG & Co. KGaA

Dated _____

Katherine I. Funk, Esq.
Brian F. Burke, Esq.
Baker & McKenzie LLP
Counsel for Fresenius Medical Care AG &
Co. KGaA

Dated _____

By: _____
Lisa D. DeMarchi Sleigh
Amy Posner
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Jordan Andrew
Mark Silvia

Attorneys
Bureau of Competition

APPROVED:

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