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Honorable Whitman L. Holt

8 UNITED STATES BANKRUPTCY COURT
9 FOR THE EASTERN DISTRICT OF WASHINGTON
10 SPOKANE/YAKIMA DIVISION

11 In Re:)
12) CHAPTER 11
13 ASTRIA HEALTH,)
14 *et al*,) Case No. 19-01189-WHL11
15 Debtors and Debtors-in-Possession.) Jointly Administered

16 DAVITA, INC.’S MOTION, ON
17 BEHALF OF ITS SUBSIDIARIES
18 TOTAL RENAL TREATMENT
19 CENTERS – WEST, INC. AND
20 TOTAL RENAL CARE, INC.,
21 PURSUANT TO 11 U.S.C. §
22 503(B)(1)(A), FOR PAYMENT OF
23 ADMINISTRATIVE EXPENSE
24 CLAIM

25 COMES NOW DaVita, Inc., on behalf of its subsidiaries Renal Treatment Centers
26 – West, Inc., and Total Renal Care, Inc. (collectively, “**Creditor**”), by and through its
27 undersigned counsel, Moyer White LLP, hereby files this Motion, pursuant to 11 U.S.C. §
28 503(b)(1)(A), for Payment of Administrative Expense Claim in the amount of not less than
29 **\$66,339.36** (the “**Administrative Claim**”) against the estates of Astria Health, *et al.*, Case

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35 ADMINISTRATIVE EXPENSE CLAIM – Page 1

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190118920072200000000025

1 No. 19-01189-11. In support of the Administrative Claim, Creditor hereby states as
2 follows:

3
4 **Background**

5 1. Creditor is engaged in the business of, among other things, providing
6 hospitals with necessary non-physician professional personnel, including registered nurses
7 and patient care technicians, to perform in-patient and out-patient services that treat blood,
8 such as dialysis, continuous renal replacement therapies, apheresis, and isolated
9 ultrafiltration therapies for renal failure and non-renal failure patients (the “**Services**”).
10

11 2. Creditor, either directly, or indirectly through its various subsidiaries, is party
12 to the following agreements (as each may have been subsequently modified or amended)
13 with the Debtors:

- 14
- 15 a. Acute Services Agreement dated December 12, 2002, between Renal
16 Treatment Centers West, Inc., and Providence Health System –
17 Washington d/b/a Providence Yakima Medical Center (the “**2002
Acute Services Agreement**”);
 - 18 b. Patient Transfer Agreement dated August 22, 2013, between Total
19 Renal Care, Inc., and Yakima HMA, LLC d/b/a Yakima Regional
20 Medical and Cardia Center relating to the Zillah-Toppenish Dialysis
21 Facility (the “**2013 Zillah-Toppenish Agreement**”);
 - 22 c. Patient Transfer Agreement dated August 22, 2013, between Renal
23 Treatment Centers – West, Inc., and Yakima HMA, LLC d/b/a
24 Yakima Regional Medical and Cardiac Center relating to the Union
25 Gap Dialysis Facility (the “**2013 Union Gap Agreement**”);
 - 26 d. Acute Services Agreement dated November 5, 2013, between Renal
27 Treatment Centers – West, Inc., and Sunnyside Community Hospital

1 Association d/b/a Sunnyside Community Hospital and Clinics (the
2 “**2013 Acute Services Agreement**”);

3 e. Patient Transfer Agreement dated March 2, 2018, between Total
4 Renal Care, Inc., and Astria Toppenish Hospital relating to the
5 Wapato-WA Dialysis Facility (the “**2018 Toppenish/Wapato-WA
6 Agreement**”);

6 f. Patient Transfer Agreement dated June 12, 2018, between Total Renal
7 Care, Inc., and Astria Sunnyside Hospital relating to the Wapato-WA
8 Dialysis Facility (the “**2018 Sunnyside/Wapato-WA Agreement**”);

9 g. Hospital Services Agreement dated September 1, 2017, between Total
10 Renal Treatment Centers – West, Inc., and Astria Regional Medical
11 Centers f/k/a SHC Medical Center Yakima (the “**2017 Yakima
12 Agreement**”);

12 h. The 2002 Acute Services Agreement, 2013 Zillah-Toppenish
13 Agreement, 2013 Union Gap Agreement, 2013 Acute Services
14 Agreement, 2018 Toppenish/Wapato-WA Agreement, 2018
15 Sunnyside/Wapato-WA Agreement and 2017 Yakima Agreement are
16 collectively the “**Creditor Agreements**”.¹

16 3. On May 6, 2019 (the “**Petition Date**”), the Debtors commenced these
17 Chapter 11 cases. The Debtors are operating their businesses and managing their properties
18 as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

19 4. Following the Petition Date, Creditor has continued to provide the Services
20 to the Debtors pursuant to the terms of the Creditor Agreements and, accordingly, the
21 Debtors are obligated to pay Creditor for the costs of those Services.
22
23

24
25 ¹ Due to their voluminous nature, true and correct copies of the Creditor Agreements may
26 be provided upon request to the undersigned.

1 5. The Services are both “actual” and “necessary” to the preservation of the
2 Debtors’ estate, as the Debtors would not be able to offer or provide the Services to their
3 patients—and collect all associated revenue—without Creditor’s provision of the Services
4 under the Creditor Agreements. *See* 11 U.S.C. § 503(b)(1)(A); *In re Transamerican*
5 *Natural Gas Corp.*, 978 F.2d 1409, 1416, *reh’g denied* 983 F.2d 1070 (5th Cir. 1992)
6 (Section 503(b)(1) is an inducement for post-petition service providers to continue to work
7 with debtors to enhance the ability of the debtors’ business to function as a going concern).
8 The Debtors in their *Emergency Motion of Debtors for Interim and Final Orders (I)*
9 *Authorizing the Debtors to Obtain Postpetition Financing; (II) Granting Security Interests*
10 *and Superpriority Administrative Expense Status; (III) Granting Adequate Protection to*
11 *Certain Prepetition Secured Credit Parties; (IV) Modifying the Automatic Stay; (V)*
12 *Authorizing the Debtors to Enter Into Agreements with JMB Capital Partners Lending,*
13 *LLC; (VI) Authorizing the Use of Cash Collateral; (VII) Scheduling a Final Hearing and*
14 *(VIII) Granting Related Relief; Memorandum of Points and Authorities in Support Thereof,*
15 stated, “It is obviously critical that the Debtors be able to demonstrate to their staff,
16 vendors, and patients that the facilities will continue to provide high quality patient care,
17 **and to function without interruption** and that the Debtors will continue to pay vendors in
18 the ordinary course of business.” (Doc. #15, at p. 37) (emphasis added). Accordingly, the
19 provision of the Services is both “actual” and “necessary” to the maintenance and
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1 continued operations of the Debtors' estate, within the meaning of Section 503(b)(1) of the
2 Bankruptcy Code.

3 6. As of the date of this Administrative Claim, the Debtors are indebted to
4
5 Creditor as follows:²

6 Invoice No. 00124897 (12/31/2019)	\$ 38,940.36
7 Invoice No. 00132171 (06/30/2020)	\$ 27,372.00
Interest Note 00127707 (05/31/2020)	\$ 27.00
8 TOTAL:	\$ 66,339.36

9 **Reservation of Rights**

10 7. The claims set forth in this Administrative Claim (and any other claims of
11 Creditor) are not subject to any known rights of setoff or counterclaims by any Debtor.
12 Creditor reserves the right to assert setoffs or counterclaims in the event any such rights
13 exist. Creditor reserves all recoupment rights with respect to the claims set forth herein or
14 any other claims.
15

16 8. Creditor expressly reserves all rights to assert any additional administrative
17 claims which have or may arise against the Debtors' estates, and nothing herein shall
18 constitute a waiver of Creditor's right to seek allowance and payment of any additional
19 administrative claim, including, without limitation, for services rendered and expenses
20 incurred (including reasonable attorneys' fees and expenses) from and after the Petition
21
22

23 _____
24 ² Contemporaneous with the filing of this Motion, Creditor will be filing an *ex parte* motion,
25 pursuant to Section 107(b) of the Bankruptcy Code, Rule 9018 of the Bankruptcy Rules and Local
26 Rule 9018-1, for entry of an order sealing the particular invoices substantiating the amount of this
27 administrative claim.

1 Date. For the avoidance of doubt, Creditor reserves the right to seek payment in full, as
2 authorized under the Creditor Agreements, for any and all postpetition expenses incurred
3 (including reasonable attorneys' fees and expenses) in connection with any action it deems
4 necessary to protect or defend its rights as a party to the Creditor Agreements and/or with
5 respect to any claims made by any person relating to the Creditor Agreements.
6

7 9. Creditor expressly reserves all rights: (a) to amend, clarify, modify,
8 supplement, or otherwise revise this Administrative Claim to the fullest extent, including
9 any schedules or exhibits hereto, in any respect, at any time and for any purpose, including,
10 without limitation (i) to correct, increase or amend the amount of the sums referred to
11 herein, (ii) to add or amend documents and other information and to describe further the
12 claims asserted herein, (iii) to assert a priority, security interest, or similar right with respect
13 to the claims asserted herein, or (iv) to include any and all claims at law or in equity under
14 or relating to the Creditor Agreements and/or any and all related and ancillary documents
15 and/or agreements; or (b) to file additional proofs of claim for additional claims, which
16 may be based on the same or additional documents. This Administrative Claim is filed
17 without prejudice to the filing by Creditor of additional proofs of claim with respect to any
18 other liability or indebtedness of any of the Debtors.
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22 10. The filing of this Administrative Claim is not an election of remedies and
23 does not constitute a submission by Creditor to the jurisdiction of the Bankruptcy Court for
24 any purpose. In executing and filing this Administrative Claim, Creditor does not waive,
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1 and shall not be construed to waive: (a) any of the rights and remedies of Creditor against
2 any other person or entity who may be liable for all or part of the claims set forth herein,
3 whether an affiliate of any Debtor, an assignee, a guarantor, or otherwise; (b) any of the
4 procedural or substantive rights or any procedural or substantive defenses of Creditor to
5 any claim that may be asserted against Creditor by the official committee of unsecured
6 creditors; (c) any of the rights of Creditor to seek to have the reference withdrawn with
7 respect to the subject matter of the claims set forth herein, any objection or other
8 proceedings commenced with respect thereto, or any other proceedings commenced in this
9 chapter 11 case against or otherwise involving Creditor; (d) any right of subordination in
10 favor of Creditor's of indebtedness or liens held by creditors of any of the Debtors; or (e)
11 any past, present, or future defaults (or events of default) by any Debtor or others in
12 connection with the Creditor Agreements and/or any and all related and ancillary
13 documents and/or agreements, or otherwise.
14

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16
17 WHEREFORE, Creditor respectfully requests that the Court enter its Order granting
18 Creditor an Administrative Claim in the amount of \$66,339.36 as expressly set forth herein,
19 and for all such other and further relief this Court deems fair and equitable.
20

21 Dated: July 22, 2020.

22 Denver, Colorado
23
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**DAVITA, INC., ON BEHALF OF ITS
SUBSIDIARIES TOTAL RENAL
TREATMENT CENTERS – WEST, INC.
AND TOTAL RENAL CARE, INC.**

By: /s/ Timothy M. Swanson
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*Attorneys for Da Vita, Inc., on behalf of its
subsidiaries Total Renal Treatment Centers –
West, Inc. and Total Renal Care, Inc.*

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CERTIFICATE OF SERVICE

Timothy Swanson declares:

1. I am an employee of Moye White LLP which represents Da Vita, Inc., on behalf of its subsidiaries Total Renal Treatment Centers – West, Inc. and Total Renal Care, Inc.
2. I am over the age of 18, and competent to make this Declaration.
3. On July 22, 2020, I electronically filed with the Clerk of the Court (using the CM/ECF System) DAVITA, INC.’S MOTION, ON BEHALF OF ITS SUBSIDIARIES TOTAL RENAL TREATMENT CENTERS – WEST, INC. AND TOTAL RENAL CARE, INC., PURSUANT TO 11 U.S.C. § 503(B)(1)(A), FOR PAYMENT OF ADMINISTRATIVE EXPENSE CLAIM.
4. It is my understanding that the CM/ECF System will send notifications of this filing to all parties listed in this case to receive notice electronically.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

/s/Timothy M. Swanson

Timothy M. Swanson

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