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February 28, 2025

Via Online Submission Form

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: DaVita Inc.
Stockholder Proposal of New York State Common Retirement Fund

Ladies and Gentlemen:

This letter is submitted by DaVita Inc., a Delaware corporation (the "Company" or "DaVita") pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, to request confirmation that the staff (the "Staff") of the Securities and Exchange Commission (the "Commission" or the "SEC") will not recommend enforcement action if, in reliance on Rule 14a-8, the Company excludes from the proxy materials (the "Proxy Materials") for the Company's 2025 Annual Meeting of Stockholders a proposal submitted by the New York State Common Retirement Fund (the "Proponent") on December 3, 2024 (the "Proposal") and accompanying supporting statement (the "Supporting Statement").

The Company intends to omit the Proposal from its Proxy Materials and respectfully requests confirmation that the Staff will not recommend to the Commission that enforcement action be taken if the Company excludes the Proposal from its Proxy Materials for the reasons set forth below.

Pursuant to Rule 14a-8(j) of the Exchange Act, the Company is submitting this letter, together with the Proposal and related attachments, to the Commission electronically, with copies of this letter and the attachments provided concurrently to the Proponent. While this submission is occurring later than 80 calendar days before the Company intends to file its definitive Proxy Materials with the Commission, the Company has good cause under Rule 14a-8(j)(i) as this submission's legal arguments relate to *Staff Legal Bulletin No. 14M* (Feb. 12, 2025) ("SLB 14M"). The printing deadline for the Company's Proxy Materials is on or about April 22, 2025, and the Company expects to file its definitive Proxy Materials on or about April 23, 2025.

Rule 14a-8(k) and *Staff Legal Bulletin No. 14D* (Nov. 7, 2008) ("SLB 14D") provide that stockholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the Staff. Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be furnished concurrently to the undersigned pursuant to Rule 14a-8(k) and SLB 14D.

THE PROPOSAL

The Proposal reads as follows:

> *RESOLVED: Shareholders of DaVita Inc. (DaVita) request that the Board of Directors issue a public report detailing and analyzing the impacts of racial and ethnic disparities in healthcare outcomes on DaVita's business. The report should include data on the extent of such racial and ethnic disparities, information about impediments to collecting such data, and efforts taken by DaVita to reduce such disparities by improving prevention outreach, remediation and educational programs, and overall healthcare outcomes.*
>
> *The report should be prepared at reasonable cost and omit confidential and proprietary information. It should be publicly disclosed on DaVita's website.*

In the Supporting Statement, the Proponent cites statistics regarding the impact of end stage kidney disease ("ESKD") on Americans and particular inequitable impacts on the Black and Hispanic communities. The Proponent then describes the movement by the Centers for Medicare and Medicaid Services ("CMS") towards a value-based care model. Proponent asserts the importance of "improv[ing] patient outcomes, prioritiz[ing] kidney health equity, and manag[ing] costs" in this new model and asserts how each impacts the reimbursement from CMS of DaVita's services. Proponent alleges benefits to investors through the publication of a report by DaVita on a variety of equity programs and policy initiatives, including "improving access to care, increasing ESKD awareness and screening, reducing treatment disparities, eliminating provider and involuntary discharge biases, and the overall reduction of racially and ethnically disparate health outcomes."

A copy of the Proposal and the Supporting Statement is attached hereto as Exhibit A.

BASIS FOR EXCLUSION

The Company respectfully requests that the Staff concur in its position that the Proposal may be properly excluded from the Proxy Materials pursuant to Rule 14a-8(i)(7), on the basis that the Proposal relates to, and does not transcend, the Company's ordinary business operations, and seeks to micromanage the Company.

ANALYSIS

The Proposal May be Excluded Pursuant to Rule 14a-8(i)(7).

Rule 14a-8(i)(7) Background

Rule 14a-8(i)(7) permits a company to omit a proposal from its proxy materials if the proposal "deals with a matter relating to the company's ordinary business operations." The purpose of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting." *See Release No. 34-40018* (May 21, 1998) (the "1998 Release"). As explained by the Commission, the term "ordinary business" in this context refers to "matters that are not necessarily 'ordinary' in the common meaning of the word, and is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company's business and operations." *Id*.

The 1998 Release explains that there are two central considerations underlying the ordinary business exclusion. The first is that "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight." *Id*. However, such proposals are not excludable if they focus on "significant social policy issues" that "transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote." *Id*. In assessing whether a particular proposal raises a "significant social policy issue," the Staff will review the terms of the proposal as a whole, including the supporting statement. *Id*.

Where a shareholder proposal requests the issuance of a report or disclosure, as is the case with the Proposal, the Staff has stated that it will look to whether the underlying subject matter of the report or disclosure concerns an ordinary business matter of the company. *See Staff Legal Bulletin No. 14E* (Oct. 27, 2009).

The second consideration underlying the ordinary business exclusion "relates to the degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." *Id*. As stated in *Staff Legal Bulletin No. 14K* (Oct. 16, 2019) ("SLB 14K"), "[w]hen a proposal prescribes specific actions that the company's management or the board must undertake without affording them sufficient flexibility or discretion in addressing the complex matter presented by the proposal, the proposal may micromanage the company to such a degree that exclusion of the proposal would be warranted."

The Proposal Is Excludable Under Rule 14a-8(i)(7) Because It Deals with Matters Relating to the Company's Ordinary Business and Does Not Focus on an Issue that Transcends Ordinary Business Matters.

The Proposal is excludable under Rule 14a-8(i)(7) because it deals with matters relating to ordinary business activities that underly the Company's comprehensive kidney care services,[1] and does not focus on an issue that transcends ordinary business matters. The Proposal seeks through the commissioning of the report to manage the Company's business, including with respect to (i) the provision of services, including quality of care, and (ii) policies with respect to the provision of services and workforce training. The stated significant social policy issue – racial and ethnic disparities in healthcare outcomes – does not transcend these ordinary business activities.

The Proposal Relates to the Manner in which the Company Provides Services.

The Staff has concurred that the manner in which a company provides its particular products or services is part of a company's ordinary business operations within the meaning of Rule 14a-8(i)(7). For example, in *AT&T Inc.* (Jan. 4, 2017) ("AT&T"), the Staff concurred in the exclusion of a shareholder proposal requesting the AT&T board review and report on AT&T's progress toward providing internet service and products for low-income customers, noting that "the proposal relates to the products and services offered by the company." In its request for relief, AT&T argued that although the underlying social policy issue was important to management, the proposal itself focused on the company's decisions regarding its products and offerings, including decisions that required management's factual analyses and judgments regarding deployment of capital and use of technologies and services. *Id. See also Pepco Holdings, Inc.* (Feb. 18, 2011) (proposal urging the company to pursue renewable solar energy was excludable as concerning the manner in which particular products and services are sold); and *Delta Air Lines, Inc.* (Mar. 28, 2018) (concurring in the exclusion of a proposal requesting a report on the discriminatory impacts of airline seat sizes on overweight and obese passengers as related to ordinary business operations, including product design and the manner in which the company provides its products and services).

Moreover, the 1998 Release identified certain "fundamental" tasks it considered to be ordinary business, including "decisions on [] quality and quantity." *See* 1998 Release. Thus, to the extent that the Proposal focuses on decision-making by the Company regarding its services, including with respect to quality of care provided by those services, it may be deemed to "[deal] with a matter relating to the company's ordinary business operations" within the meaning of Rule 14a-8(i)(7). *See also HCA Healthcare, Inc.* (Mar. 6, 2023) (concurring with the exclusion of a proposal requesting provision of particular food options to patients as it related to "complex operational, business and quality of care issues requiring knowledge of ordinary business and

[1] The Company is a comprehensive kidney care provider, serving approximately 281,100 patients at 3,166 outpatient dialysis centers in the U.S. and abroad, and additionally contracts to provide hospital inpatient dialysis services in approximately 760 hospitals throughout the U.S. The Company's business is comprehensive kidney care, utilizing a patient-centric care model to leverage its platform of kidney care services to maximize patient choice in both models and modalities of care.

operational matters"); and *McDonald's Corporation* (Mar. 12, 2019) (concurring in the exclusion of a proposal relating to food quality and integrity, on the basis that the proposal related to "the Company's ordinary business operations").

The Proposal is directly related to the Company's provision of services that are at the core of the Company's business. For example, the Proposal requests information with respect to "efforts taken by DaVita to reduce [racial and ethnic] disparities [in healthcare outcomes] by improving prevention outreach, remediation and educational programs, and overall healthcare outcomes." In particular, the Supporting Statement lobbies for an increasing focus on quality of care (i.e., "value-based care"), including the provision of the Company's U.S. dialysis services in a way that would maximize the Company's reimbursement from CMS by improving patient outcomes, prioritizing kidney health equity and managing costs by tying reimbursement directly to the quality of care delivered rather than the sheer volume of services provided. Determining how to provide value-based care in a way that would maximize CMS reimbursement involves detailed, factual analyses and knowledge of the services provided by the Company to its patients and the ways in which those services are submitted to payors, such as CMS, for reimbursement. Each of these decisions (including the foundational decision regarding whether to make maximization of CMS reimbursement the Company's primary goal) relies on the expertise and judgment of management.[2]

As a comprehensive kidney care provider, a crucial part of the Company's business is maximizing healthcare outcomes, which is the central focus of the Proposal. In order to produce the Proposal's requested report, the Company would need to analyze healthcare outcomes of all its patients and compare outcomes of all patients to patients of particular races or ethnicities. Yet health outcomes are influenced by a variety of factors, including quality of care, which the Company strives to increase by using patient-centered care models to empower every patient with the opportunity to achieve their best health outcomes, regardless of race, ethnicity or other social determinants. Quality of care and other factors that improve healthcare outcomes are the very matters the Company considers on a day-to-day basis in the management of its business. Thus, consistent with the precedent cited above, the Proposal focuses on the Company's ordinary business decisions regarding the provision of its services and the quality of its care and may therefore be excluded pursuant to Rule 14a-8(i)(7).

[2] For example, if the Proponent were familiar with the Company's business at the level of management, then it would understand that the CMS value-based care model identified by the Proponent (the Framework for Health Equity and End Stage Renal Disease Treatment Choices Model (the "ETC Model")) is a pilot program that does not apply to all of the Company's clinics. It is not clear whether the ETC Model will continue after the pilot period. Thus, implementing the ETC Model throughout the Company's operations, as Proponent appears to suggest, may not benefit the Company.

The Proposal Relates to Management of the Company's Policies Concerning its Services and Management of its Workforce.

The Staff has recognized that management of company policies regarding products and services is ordinary business and subject to exclusion under Rule 14a-8(i)(7). *See Amazon.com, Inc.* (Mar. 28, 2019) (concurring in the exclusion of a shareholder proposal focused on "ongoing review of corporate policies and procedures" related to the Company's products and services as a matter of "ordinary business operations."); and *Wal-Mart Stores, Inc.* (Apr. 10, 1991) (concurring in the exclusion of a proposal under Rule 14a-8(c)(7) as it required information regarding "employment practices and policies" and "practices and policies for selecting suppliers of goods and services").

Policies related to the management of the workforce are likewise excludable as ordinary business matters. *See* 1998 Release (identifying "the management of the workforce" as a task "fundamental to management's ability to run a company on a day-to-day basis"). In *United Technologies Corp.* (Feb. 19, 1993), the Staff specifically enumerated "employee training" in a list of excludable ordinary business categories. *See also, Merck & Co., Inc.* (Feb. 16, 2016) (permitting exclusion of a policy concerning employee hiring and promotion procedures because "[p]roposals concerning a company's management of its workforce are generally excludable under rule 14a-8(i)(7)").

Here, the Proposal seeks information regarding DaVita's policies, including regarding its services and its workforce training. Specifically, the Proposal requests information regarding the Company's overall efforts to "improv[e] prevention outreach, remediation and educational programs[.]" The Supporting Statement further explains that the report should address specific Company policies and procedures, including with respect to "progress on improving access to care, increasing ESKD awareness and screening, reducing treatment disparities, [and] eliminating provider and involuntary discharge biases…[.]"

All of these topics are matters of policy related directly to the provision of the Company's services. For example, for over ten years, DaVita has offered no-cost educational courses focused on kidney disease for patients and their families through Kidney Smart, which has been associated with higher rates of individuals starting home dialysis and lower hospitalization and mortality rates in the first year of treatment.[3] The Kidney Smart courses are offered in over ten languages to help temper the impact that language barriers may have on health education for the kidney care population. As another example, in 2023, DaVita launched its Health Tour, a mobile health screening and kidney care education program to help identify and raise awareness of risk factors that may lead to chronic kidney disease and enable individuals at risk to work with care providers

[3] DaVita Inc. (Jul. 19, 2022). *Kidney Smart Education Tied to Improved Health Outcomes for Patients* [Press release]. https://newsroom.davita.com/Kidney-Smart-Study

to plan early intervention, as needed.[4] Whether and how management chooses to implement programs like these, which are focused on prevention outreach, remediation and education, and whether to implement additional programs to increase awareness and screening is a matter of policy that constitutes an ordinary business matter for management and thus is excludable under Rule 14a-8(i)(7).

In addition, DaVita's management has made the decision to train its care teams on cultural humility and unconscious bias to promote the delivery of personalized treatment, a principle of DaVita's patient-centered care models.[5] The Company's decisions with respect to the training of its care teams on provider and involuntary discharge biases, including the type of training and frequency, are inherent in the day-to-day operations of the Company. Consistent with the Commission's statement in the 1998 Release and the above precedent, matters related to the Company's implementation of anti-bias education and training involves the manner in which the Company hires and trains its workforce and other care partners and, therefore, may be excluded under Rule 14a-8(i)(7).

The Proposal Does Not Transcend the Company's Ordinary Business.

While some of the issues that would be addressed in the report requested by the Proposal may touch upon significant policy issues, *i.e.*, racial and ethnic disparities in healthcare outcomes, the Proposal can be properly excluded under Rule 14a-8(i)(7) because the underlying subject matter of the report sought by the Proposal encompasses a wide range of issues implicating the Company's ordinary business operations, including those related to the manner in which the Company provides its healthcare services, including the quality of its care, and its workforce policies and training. The Staff has consistently concurred in the exclusion of proposals even if they are deemed to touch upon a "significant policy issue" within the meaning of Rule 14a-8(i)(7) if the proposals also encompass ordinary business matters and the policy issue does not transcend these ordinary business matters. *See, e.g., The TJX Companies, Inc.* (Apr. 9, 2021) (concurring in the exclusion of a proposal seeking information about monitoring of suppliers' compliance with the company's policy prohibiting prison labor because the proposal "[did] not transcend the [c]ompany's ordinary business operations"). This position prevents proponents from circumventing the standards of Rule 14a-8(i)(7) by combining ordinary business matters with a significant policy issue.

For example, in *Amazon.com, Inc.* (Mar. 28, 2019) the Staff concurred in the exclusion of a proposal requesting the establishment of a particular committee that would conduct and publish a report on "an ongoing review of corporate policies and procedures . . . to assess the potential societal consequences of the Company's products and services." Although the proposal and

[4] DaVita Inc. (Sept. 13, 2023). *DaVita launches community health tour to provide free kidney screenings and education coast-to-coast* [Press release]. https://newsroom.davita.com/2023-09-13-DaVita-launches-community-health-tour-to-provide-free-kidney-screenings-and-education-coast-to-coast

[5] *See* Jeffrey Giullian, MD, MBA, and Thomas H. Lee, MD, MSc (Sept. 7, 2022). *Equitable Kidney Disease Care: Far from Perfect, Far from Done*. NEJM Catalyst. https://catalyst.nejm.org/doi/full/10.1056/CAT.22.0276

supporting statement contained generalized references to "potential societal consequences" such as civil liberties and privacy, the principal focus of the risks that the proposal addressed related to the company's ordinary business operations, including its products and services and related policies, business practices and operations, strategic decisions; and choice of technologies.

Here, although the Proposal and Supporting Statement identify the issue of racial and ethnic disparities in healthcare, the principal focus of the risks to the Company's business identified by the Proposal and Supporting Statement relate to the Company's day-to-day operational performance and does not transcend day-to-day operations, including as it relates to:

(1) The provision of services that result in "value-based care" in a manner that increases reimbursement from CMS. (*See* Supporting Statement.)
(2) A focus on preventative measures and efficient treatment plans. (*See* Supporting Statement.)
(3) The quality of the Company's patient services, specifically as related to reduction of treatment disparities through prevention outreach, access to care, awareness of ESKD and screening for ESKD. (*See* Supporting Statement.)
(4) The implementation of workforce policies and procedures, including as related to remediation and educational programs and training to eliminate provider and involuntary discharge biases. (*See* Proposal and Supporting Statement.)

Finally, the Staff has indicated that, when evaluating whether the significant policy exception applies, it will take a "company-specific approach in evaluating significance" instead of determining that "particular issues or categories of issues are universally 'significant.'" *SLB 14M*. While racial and ethnic disparities in healthcare outcomes may reflect a significant policy issue, there is not a sufficient nexus to the Company's business operations such that it transcends the Company's ordinary business operations. The presence of such a nexus is a critical component of the analysis as to whether the significant policy exception should apply. See *id*. and footnote 32 to *Staff Legal Bulletin No. 14H* (Oct. 22, 2015). *See, e.g., Omnicom Group Inc.* (Mar. 17, 2021) (concurring in the exclusion of a proposal regarding civil and human rights where there was an "insufficient nexus" between the identified policy and the company's advertising policies) and *PayPal Holdings Inc.* (Mar. 6, 2018) (concurring in the exclusion of a proposal addressing climate change which did not have a sufficient nexus to the company's technology and digital payment business).

The Company endeavors to empower every patient with the opportunity to achieve their best health outcomes, regardless of race, ethnicity or other social determinants. However, because the primary business of the Company is to serve as a comprehensive kidney care provider, there is insufficient nexus between the policy issue at the heart of the Proposal and DaVita, the Proposal is properly excludable under Rule 14a-8(i)(7).

The Proposal Is Excludable Under Rule 14a-8(i)(7) Because It Seeks to Micromanage the Company by Probing Too Deeply Into Complex Matters and Aspects of the Company's Internal Operations.

The Staff has concurred with the exclusion under Rule 14a-8(i)(7) of shareholder proposals that seek to micromanage a company's ordinary business operations, including when proposals provide a specific method for implementing complex policies as a substitute for the judgment and discretion of management. *See* SLB 14M, Annex A (reinstating SLB 14K). In addition, SLB 14K notes that "if the method or strategy for implementing the action requested by the proposal is overly prescriptive, thereby potentially limiting the judgment and discretion of the board and management, the proposal may be viewed as micromanaging the company." Further, "[w]hen a proposal prescribes specific actions that the company's management or the board must undertake without affording them sufficient flexibility or discretion in addressing the complex matter presented by the proposal, the proposal may micromanage the company to such a degree that exclusion of the proposal would be warranted." Finally, proposals seeking "an intricately detailed study or report may be excluded on micromanagement grounds." *See* SLB 14M, Annex A (reinstating SLB 14J).

Based on the standard articulated in SLB 14M and SLB 14K, the Staff has consistently concurred with the exclusion of proposals attempting to micromanage a Company. In *State Street Corporation* (Mar. 26, 2021) ("State Street"), the proponent requested that the board of State Street provide a report as to how State Street's voting and engagement policies affect the majority of its clients and shareholders. The proposal sought to dictate the standards to be used in developing engagement and voting policies, thereby seeking to supplant the company's judgment. The Staff permitted the exclusion of the proposal as it micromanaged the company to such a degree that exclusion was warranted. *See also, JPMorgan Chase & Co.* (Mar. 30, 2018) (concurring in exclusion of a proposal on the basis of micromanagement as it requested a report on the reputational, financial and climate risks associated with project and corporate lending, underwriting, advising and investing of tar sands projects); and *The Goldman Sachs Group, Inc.* (Mar. 12, 2019) (concurring in the exclusion of a proposal requesting that the company adopt a policy to reduce the carbon footprint of its loan and investment portfolios).

In addition, under Rule 14a-8(i)(7), a proposal may be excluded as micromanaging the company, even if it focuses on a significant social issue or transcends the company's ordinary course operations. *See SeaWorld Entertainment, Inc.* (Apr. 20, 2021) (concurring that a proposal seeking a report on specific changes to the company's business to address animal welfare concerns was excludable as an attempt to micromanage the company); *Exxon Mobil Corporation* (Mar. 6, 2020) (concurring with the exclusion of a proposal requesting that the company's board charter a new board committee on climate risk, noting that as a result, "the Proposal unduly limits the board's flexibility and discretion in determining how the board should oversee climate risk").

Like the *State Street* proposal, the Proposal seeks to micromanage the Company by requesting an intricately detailed report probing deeply into complex areas of healthcare treatments

and patient outcomes across the Company's business. The Proposal requests an analysis of the broad topic of the impacts of racial and ethnic disparities in healthcare outcomes on DaVita's entire patient population, and the intricate details of the Company's business must underpin this analysis. The decisions made by the Company to support the best clinical outcome for each patient are complex and require critical input and judgment from treating physicians and other highly trained medical professionals. DaVita's shareholders, as a group, would not be in a position to provide meaningful input on these very important and nuanced decisions. Such considerations are complex and cannot, as a practical matter, be subject to shareholder oversight.

Moreover, the Proposal limits the specific methods by which the Company should work to reduce racial and ethnic disparities: "by improving prevention outreach, remediation and educational programs, and overall healthcare outcomes." By prescribing the acceptable methods by which the Company may reduce racial and ethnic disparities, the Proposal limits the ability of management to manage complex matters facing the Company's business without affording management flexibility or discretion in the manner in which to accomplish such matters. Consequently, the Proposal is excludable under Rule 14a-8(i)(7) as seeking to micromanage the Company.

CONCLUSION

For the foregoing reasons, the Company requests your confirmation that the Staff will not recommend any enforcement action to the Commission if the Proposal is omitted from the Proxy Materials.

We would be happy to provide any additional information and answer any questions regarding this matter. Should you have any questions, please contact the undersigned at sbarros@sidley.com or (202) 736-8387.

Sincerely,

Sonia Barros

Sonia G. Barros

Enclosures

cc: Kathleen A. Waters, Chief Legal and Public Affairs Officer, DaVita Inc.
Samantha A. Caldwell, Vice President, Deputy General Counsel and Corporate Secretary, DaVita Inc.
John White, Corporate Governance Officer, New York State Common Retirement Fund

EXHIBIT A

THOMAS P. DINAPOLI
COMPTROLLER

110 STATE STREET
ALBANY, NEW YORK 12236

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

December 3, 2024

Samantha A. Caldwell
Corporate Secretary
DaVita Inc.
2000 16th Street
Denver, CO 80202

Dear Samantha A. Caldwell:

The Comptroller of the State of New York, Thomas P. DiNapoli, is the Trustee of the New York State Common Retirement Fund (the "Fund") and the Administrative Head of the New York State and Local Retirement System. The Comptroller has authorized me in my capacity as Corporate Governance Officer for the New York State Common Retirement Fund to inform you of his intention to offer the enclosed shareholder proposal for consideration of stockholders at the next annual meeting.

I submit the enclosed proposal to you in accordance with Rule 14a-8 of the Securities Exchange Act of 1934 and ask that it be included in your proxy statement.

A letter from J.P. Morgan Chase, the Fund's custodial bank, verifying the Fund's ownership of DaVita Inc. shares with a market value of at least $25,000, continually for over one year, is enclosed. The Fund intends to continue to hold at least $25,000 worth of these securities through the date of the annual meeting.

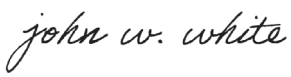
We would be happy to discuss this initiative with you. Should DaVita Inc. decide to endorse its provisions as company policy, the Comptroller will ask that the proposal be withdrawn from consideration at the annual meeting. A staff member from our office is available to meet with the

company via teleconference no less than 10 days, nor more than 30 days after the date of this letter. Specifically, we are available during business hours on December 13, or December 20.

Additionally, please direct any mail correspondence related to this proposal to "New York State Common Retirement Fund" at 110 State Street, 14th Floor, Albany, NY 12236.

Please feel free to contact me at [redacted] PII [redacted] should you have any further questions on this matter.

Sincerely,



John White
Corporate Governance Officer

Enclosures

Resolved:

Shareholders of DaVita Inc. (DaVita) request that the Board of Directors issue a public report detailing and analyzing the impacts of racial and ethnic disparities in healthcare outcomes on DaVita's business. The report should include data on the extent of such racial and ethnic disparities, information about impediments to collecting such data, and efforts taken by DaVita to reduce such disparities by improving prevention outreach, remediation and educational programs, and overall healthcare outcomes.

The report should be prepared at reasonable cost and omit confidential and proprietary information. It should be publicly disclosed on DaVita's website.

Supporting Statement:

End Stage Kidney Disease (ESKD) affects over 780,000 Americans and is associated with morbidity and premature death. Evidence demonstrates that Black and Hispanic communities are significantly less likely to be treated with home dialysis or receive kidney transplantation, even though they face much higher rates of kidney disease. These inequities have, according to a 2023 paper by Walker and Gadegbeku in Cardiovascular Diagnosis and Therapy, the "combined devastating impact of worse outcomes and quality of life for patients and families at a significant financial cost on the healthcare system."

Most of DaVita's U.S. dialysis revenues are from the Center for Medicare and Medicaid Services (CMS). CMS, DaVita's largest payer, has been moving from a fee-for-service model to a value-based care model, incentivizing dialysis providers to improve patient outcomes, prioritize kidney health equity, and manage costs by tying their reimbursement directly to the quality of care delivered, rather than the sheer volume of services provided, thus encouraging them to focus on preventative measures and efficient treatment plans for their patients with kidney disease.[1]

Shareholders would benefit from disclosure of whether the company's efforts to integrate CMS's value-based Framework for Health Equity are, in fact, building health equity, reducing disparities and improving outcomes for patients and therefore mitigating risks to DaVita's business.

We believe that DaVita can best serve its investors' long-term interests by reporting to shareholders about progress on improving access to care, increasing ESKD awareness and screening, reducing treatment disparities, eliminating provider and involuntary discharge biases, and the overall reduction of racially and ethnically disparate health outcomes.

Accordingly, we urge shareholders to support this proposal calling on DaVita to issue a report examining the impacts of racial and ethnic disparities in healthcare outcomes on DaVita's business.

[1] https://www.cms.gov/medicare/quality/value-based-programs

J.P.Morgan

Miriam G. Awad
Vice President
CIB Client Service Americas

December 3, 2024

Samantha A. Caldwell
Corporate Secretary
DaVita Inc.
2000 16th Street
Denver, CO 80202

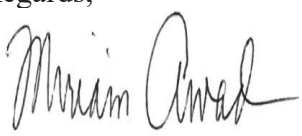
Dear Ms. Caldwell,

This letter is in response to a request by The Honorable Thomas P. DiNapoli, New York State Comptroller, regarding confirmation from JP Morgan Chase that the New York State Common Retirement Fund has been a beneficial owner of Davita Inc. continuously for at least one year as of and including December 3, 2024.

Please note that J.P. Morgan Chase, as custodian for the New York State Common Retirement Fund, held a total of 32,354 shares of common stock as of December 3, 2024 and continues to hold shares in the company. The value of the ownership stake continuously held by the New York State Common Retirement Fund had a market value of at least $25,000.00 for at least twelve months prior to, and including, said date.

If there are any questions, please contact me at [redacted PII].

Regards,



Miriam Awad

cc: John White- NYSCRF
Kyle Seeley - NYSCRF
Lynn Wilson – NYSCRF