

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ALBERTO PEÑA, individually and on behalf
of all others similarly situated,

Plaintiff,

vs.

SURGICAL CARE AFFILIATES, LLC;
SCAI HOLDINGS, LLC; UNITEDHEALTH
GROUP, INC., DAVITA, INC., UNITED
SURGICAL PARTNERS HOLDING
COMPANY, INC., UNITED SURGICAL
PARTNERS INTERNATIONAL, INC.,
TENET HEALTHCARE CORPORATION,
and JOHN DOE 1,

Defendants.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Alberto Peña, by way of complaint against defendants Surgical Care Affiliates, LLC, SCAI Holdings, LLC, UnitedHealth Group, Inc., (collectively “SCA”), DaVita, Inc. (“DaVita”), United Surgical Partners Holding Company, Inc., United Surgical Partners International, Inc., Tenet Healthcare Corporation (collectively “USPI”), and John Does 1, alleges as follows:

Nature of the Action

1. Competition is the guiding light of our economy. Competition leads to better product safety and quality, and it also leads to better service and lower prices. In order to put themselves in the best position to lead their respective industry, companies compete for the services of employees that will help them accomplish their competitive objectives. A competitive industry also has a competitive labor market.

2. Some companies in certain sectors of the economy have, from time to time, sought to reduce the cost of labor and decrease employee mobility by reaching agreements with their competitors not to hire each other's employees. These so-called "no-poach" agreements are increasingly recognized by antitrust enforcement authorities as per se violations of the antitrust laws. As the Antitrust Division of the United States Department of Justice has noted, "[w]hen companies agree not to hire or recruit one another's employees, they are agreeing not to compete for those employees' labor. The same rules apply when employers compete for talent in labor markets as when they compete to sell goods and services. After all, workers, like consumers, are entitled to the benefits of a competitive market. Robbing employees of labor market competition deprives them of job opportunities, information, and the ability to use competing offers to negotiate better terms of employment."¹

3. This case involves years-long no-poach agreements between Defendants, and these particular no-poach agreements led to a DOJ investigation and announcement on January 7, 2021, that it had secured a grand jury indictment against Defendant Surgical Care Affiliates, LLC, and SCAI Holdings, LLC. The no poach agreement between SCA and its coconspirators had been successfully concealed until the DOJ's January 7, 2021, announcement, which publicly disclosed, for the first time, the no-poach agreement alleged among Defendants.

4. The DOJ alleges in the indictment that SCA conspired with its competitors, identified by the DOJ as "Company A" and "Company B," to refrain from soliciting or hiring each other's senior-level employees ("director level" and above) absent notifying and obtaining consent from their current employers. *See United States of America v. Surgical Care Affiliates,*

¹ <https://www.justice.gov/atr/division-operations/division-update-spring-2018/antitrust-division-continues-investigate-and-prosecute-no-poach-and-wage-fixing-agreements>, last accessed on June 30, 2021.

LLC, et al., No. 3-21 cr0011-L (N.D. Tex.) (filed Jan. 5, 2021). On information and belief, Plaintiffs allege that “Company A” is USPI and that “Company B” is DaVita. The conspiracy is alleged to have started as early as 2010 and lasted at least until 2017. SCA and its co-conspirators USPI and DaVita are the largest operators of out-patient medical care facilities in the United States.

5. The DOJ announced on July 15, 2021, that a federal grand jury returned a two-count indictment charging DaVita and its former CEO, Kent Thiry, for conspiring with competing employers, one of whom is SCA, not to solicit certain employees, confirming Plaintiff’s belief.

6. The no-poach agreements between them were not necessary to accomplish or put in place any legitimate business transaction or lawful collaboration among the companies. Defendants’ conspiracy was strictly a tool to suppress their senior-level employees’ mobility and compensation, and hence their own expenses.

7. These no-poach agreements accomplished their purpose. They reduced competition for Defendants’ senior-level employees and suppressed Defendants’ senior-level employee compensation below competitive levels. The conspiracy disrupted the efficient allocation of labor that would have resulted if Defendants had competed for, rather than colluded against, their current and prospective senior-level employees.

8. Defendants’ agreements also denied their senior-level employees access to job opportunities, restricted their mobility, and deprived them of significant information that they could have used to negotiate for better compensation and terms of employment.

Jurisdiction and Venue

9. Plaintiff brings this action under Section 1 of the Sherman Act, 15 U.S.C. § 1, to recover damages and obtain injunctive relief, including treble damages, costs of suit, and reasonable attorneys' fees for the injuries that Plaintiff and members of the Class sustained as a result of Defendants' violations.

10. The Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), and 15 U.S.C. § 15.

11. This Court has personal jurisdiction over Defendants because, among other things, they (a) transacted business throughout the United States, including in this District; (b) had and maintained substantial aggregate contacts with the United States as a whole, including in this District; (c) had substantial contact in various states in the United States, including in this District; and (d) were engaged in an illegal conspiracy that was directed at, and had a direct, substantial, reasonably foreseeable, and intended effect of causing injury to the business or property of persons and entities residing in, located in, or doing business throughout the United States, including in this in the United States, including in this District. Defendants also conduct business throughout the United States, including in this District, and have purposefully availed themselves of the laws of the United States.

12. Venue is proper in this District pursuant to 15 U.S.C. §§ 15(a), 22 and 28 U.S.C. §§ 1391(b), (c), and (d) because during the Class Period, Defendants resided or transacted business in this District, and a substantial portion of the affected interstate trade and commerce was carried out in this district.

Parties

13. Plaintiff Alberto Peña is a resident of Texas. He was employed by DaVita in Texas from approximately July 2006 to June 2019 and was held out to the public as a first as a

facility administrator, and spent the last seven years of his employment with DaVita as a Regional Operations Director

14. Defendant Surgical Care Affiliates, LLC, was a company organized and existing under the laws of Delaware with its principal places of business in Birmingham, Alabama and Deerfield, Illinois. Surgical Care Affiliates, LLC is a wholly owned subsidiary of UnitedHealth Group, Inc.

15. Defendant SCAI Holdings, LLC, is a company organized and existing under the laws of Delaware with its principal place of business in Deerfield, Illinois, and is the successor entity to Surgical Care Affiliates, LLC. SCAI Holdings, LLC is a wholly owned subsidiary of UnitedHealth Group, Inc. Collectively, the defendants did business as Surgical Care Affiliates (“SCA”). SCA owned and operated outpatient medical care facilities across the United States and employed individuals to operate its business at its headquarters locations and at other locations across the United States.

16. Defendant UnitedHealth Group, Inc. (“UHG”) is a company organized and existing under the laws of Delaware, with its principal place of business at 9900 Bren Road East, UnitedHealth Group Center, Minnetonka, MN 55343. Andrew Hayek was Chairman and Chief Executive Officer of SCA from 2008 until 2017. In 2017, he became Chief Executive Officer of UHG affiliate OptumHealth. In 2019, he became Executive Vice President of UHG affiliate Optum. Upon information and belief, Hayek is referred to as “Individual 1” in the DOJ indictment.

17. Defendant DaVita, Inc. (“DaVita”), is a company organized and existing under the laws of Delaware with its principal place of business in Denver, Colorado. DaVita owns and operates outpatient medical care facilities across the United States and employs individuals to

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