

**U.S. District Court
District of Columbia (Washington, DC)
CIVIL DOCKET FOR CASE #: 1:20-cv-01798-BAH**

DAVITA INC. v. UNITED STATES DEPARTMENT OF
HEALTH & HUMAN SERVICES et al
Assigned to: Chief Judge Beryl A. Howell
Cause: 05:552 Freedom of Information Act

Date Filed: 07/02/2020
Date Terminated: 06/23/2021
Jury Demand: None
Nature of Suit: 895 Freedom of
Information Act
Jurisdiction: U.S. Government Defendant

Plaintiff

DAVITA INC.

represented by **John P Elwood**
ARNOLD & PORTER KAYE SCHOLER
LLP
601 Massachusetts Ave NW
Washington, DC 20001
202-942-5992
Fax: 202-942-5999
Email: john.elwood@arnoldporter.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Andrew Tutt
ARNOLD & PORTER KAYE SCHOLER
LLP
601 Massachusetts Ave, NW
Washington, DC 20001
202-942-5242
Fax: 202-942-5999
Email: andrew.tutt@arnoldporter.com
ATTORNEY TO BE NOTICED

Samuel Francis Callahan
ARNOLD & PORTER KAYE SCHOLER
LLP
601 Massachusetts Ave, NW
Washington, DC 20001
(202) 942-5000
Email: sam.callahan@arnoldporter.com
ATTORNEY TO BE NOTICED

V.

Defendant

**UNITED STATES DEPARTMENT
OF HEALTH & HUMAN SERVICES**

represented by **Thomas Duffey**
U.S. ATTORNEY'S OFFICE
555 4th Street, NW
Washington, DC 20530
(202) 252-2510
Email: thomas.duffey@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Paul A. Mussenden
U.S. ATTORNEY'S OFFICE FOR THE
DISTRICT OF COLUMBIA
555 Fourth Street, NW
Washington, DC 20530
(202) 252-7874
Fax: (202) 252-2599

Defendant

**CENTERS FOR MEDICARE &
MEDICAID SERVICES**

represented by **Thomas Duffey**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Paul A. Mussenden
(See above for address)
TERMINATED: 12/20/2020

Date Filed	#	Docket Text
07/02/2020	<u>1</u>	COMPLAINT against All Defendants (Filing fee \$ 400 receipt number ADCDC-7294193) filed by DAVITA INC.. (Attachments: # <u>1</u> Exhibit Exhibit A, # <u>2</u> Exhibit Exhibit B, # <u>3</u> Exhibit Exhibit C, # <u>4</u> Exhibit Exhibit D, # <u>5</u> Civil Cover Sheet, # <u>6</u> Summons)(Callahan, Samuel) (Entered: 07/02/2020)
07/02/2020	<u>2</u>	LCvR 26.1 CERTIFICATE OF DISCLOSURE of Corporate Affiliations and Financial Interests by DAVITA INC. (Callahan, Samuel) (Entered: 07/02/2020)
07/02/2020		Case Assigned to Chief Judge Beryl A. Howell. (adh,) (Entered: 07/02/2020)
07/02/2020	<u>3</u>	SUMMONS (4) Issued Electronically as to CENTERS FOR MEDICARE & MEDICAID SERVICES, UNITED STATES DEPARTMENT OF HEALTH & HUMAN SERVICES, U.S. Attorney and U.S. Attorney General (Attachment: # <u>1</u> Notice and Consent)(adh,) (Entered: 07/02/2020)
07/02/2020	<u>4</u>	STANDING ORDER. Signed by Chief Judge Beryl A. Howell on July 2, 2020. (lcbah3) (Entered: 07/02/2020)
08/04/2020	<u>5</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed. CENTERS FOR MEDICARE & MEDICAID SERVICES served on 7/6/2020; UNITED STATES DEPARTMENT OF HEALTH & HUMAN SERVICES served on 7/7/2020 (Attachments: # <u>1</u> Affidavit Affidavit of Service, # <u>2</u> Exhibit A, # <u>3</u> Exhibit B)(Callahan, Samuel) (Entered: 08/04/2020)
08/04/2020	<u>6</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed as to the United States Attorney. Date of Service Upon United States Attorney on 7/8/2020. Answer due for ALL FEDERAL DEFENDANTS by 8/7/2020. (Attachments: # <u>1</u> Affidavit Affidavit of Service, # <u>2</u> Exhibit A, # <u>3</u> Exhibit B)(Callahan, Samuel) (Entered: 08/04/2020)
08/04/2020	<u>7</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed on United States Attorney General. Date of Service Upon United States Attorney General 7/8/2020. (Attachments: # <u>1</u> Affidavit Affidavit of Service, # <u>2</u> Exhibit A, # <u>3</u> Exhibit B)(Callahan, Samuel) (Entered: 08/04/2020)
08/07/2020	<u>8</u>	ANSWER to Complaint by CENTERS FOR MEDICARE & MEDICAID SERVICES, UNITED STATES DEPARTMENT OF HEALTH & HUMAN SERVICES.(Mussenden, Paul) (Entered: 08/07/2020)
08/21/2020	<u>9</u>	Joint STATUS REPORT by CENTERS FOR MEDICARE & MEDICAID SERVICES, UNITED STATES DEPARTMENT OF HEALTH & HUMAN SERVICES. (Mussenden, Paul) (Entered: 08/21/2020)
08/24/2020		MINUTE ORDER (paperless) DIRECTING, upon consideration of the parties' <u>9</u> Joint Status Report, the parties to file, by October 5, 2020, a joint status report advising the Court of (1) the status of defendants' searches, including an estimate of when those searches will be completed; (2) when defendants expect to make a final determination for plaintiff's FOIA request; and (3) a proposed schedule to govern further proceedings. Signed by Chief Judge Beryl A. Howell on August 24, 2020. (lcbah3) (Entered: 08/24/2020)

08/25/2020		Set/Reset Deadlines: Joint Status Report due by 10/5/2020. (zhmc) (Entered: 08/25/2020)
10/05/2020	<u>10</u>	Joint STATUS REPORT (<i>Second</i>) by DAVITA INC.. (Callahan, Samuel) (Entered: 10/05/2020)
10/06/2020		MINUTE ORDER (paperless) DIRECTING, upon consideration of the parties' <u>10</u> Joint Status Report, the parties to submit, by November 4, 2020, a joint status report advising the Court of (1) the status of defendants' processing, including whether that processing has been completed and, if not, an estimate of when the processing will be completed; (2) whether defendants have made a final determination for plaintiff's FOIA request and, if not, an estimate of when defendants expect to make a final determination; and (3) a proposed schedule to govern further proceedings. Signed by Chief Judge Beryl A. Howell on October 6, 2020. (lcbah3) (Entered: 10/06/2020)
10/07/2020		Set/Reset Deadlines: Joint Status Report due by 11/4/2020. (ztg) (Entered: 10/07/2020)
11/04/2020	<u>11</u>	Joint STATUS REPORT (<i>Third</i>) by DAVITA INC.. (Callahan, Samuel) (Entered: 11/04/2020)
11/05/2020		MINUTE ORDER (paperless) DIRECTING, upon consideration of the parties' <u>11</u> Joint Status Report, the parties to file, by November 25, 2020, a joint status report advising the Court whether any disputes remain between the parties, and if so, proposing a schedule for further proceedings. Signed by Chief Judge Beryl A. Howell on November 5, 2020. (lcbah3) (Entered: 11/05/2020)
11/06/2020		Set/Reset Deadlines: Joint Status Report due by 11/25/2020. (ztg) (Entered: 11/06/2020)
11/25/2020	<u>12</u>	Joint STATUS REPORT by UNITED STATES DEPARTMENT OF HEALTH & HUMAN SERVICES. (Mussenden, Paul) (Entered: 11/25/2020)
11/30/2020		MINUTE ORDER (paperless) ISSUING, in light of the parties' <u>12</u> Joint Status Report, the following SCHEDULING ORDER to govern the timing of further proceedings in this matter: (1) by January 14, 2021, defendants shall file their motion for summary judgment; (2) by January 21, 2021, plaintiff shall file its combined opposition and cross-motion for summary judgment; (3) by February 10, 2021, defendants shall file their combined opposition and reply; and (4) by February 17, 2021, plaintiff shall file its reply. Signed by Chief Judge Beryl A. Howell on November 30, 2020. (lcbah3) (Entered: 11/30/2020)
11/30/2020		Set/Reset Deadlines: Summary Judgment motion due by 1/14/2021; cross-motion and opposition to motion for summary judgment due by 1/21/2021; opposition to cross-motion and reply to opposition to motion for summary judgment due by 2/10/2021; reply to opposition to cross-motion due by 2/17/2021. (ztg) (Entered: 11/30/2020)
12/20/2020	<u>13</u>	NOTICE OF SUBSTITUTION OF COUNSEL by Thomas Duffey on behalf of All Defendants Substituting for attorney Paul A. Mussenden (Duffey, Thomas) (Entered: 12/20/2020)
01/14/2021	<u>14</u>	MOTION for Summary Judgment by CENTERS FOR MEDICARE & MEDICAID SERVICES, UNITED STATES DEPARTMENT OF HEALTH & HUMAN SERVICES (Attachments: # <u>1</u> Statement of Facts, # <u>2</u> Declaration Exhibit A to Statement of Facts, # <u>3</u> Exhibit Exhibits 1-5 to Gilmore Declaration, # <u>4</u> Memorandum in Support with proposed order)(Duffey, Thomas) (Entered: 01/14/2021)
01/21/2021	<u>15</u>	NOTICE of Appearance by John P Elwood on behalf of DAVITA INC. (Elwood, John) (Entered: 01/21/2021)
01/21/2021	<u>16</u>	NOTICE of Appearance by Andrew Tutt on behalf of DAVITA INC. (Tutt, Andrew) (Entered: 01/21/2021)
01/21/2021	<u>17</u>	Cross MOTION for Summary Judgment by DAVITA INC.. (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Statement of Facts, # <u>3</u> Exhibit 1, # <u>4</u> Exhibit 2, # <u>5</u> Exhibit 3, # <u>6</u> Text of Proposed Order)(Elwood, John) (Entered: 01/21/2021)
01/21/2021	<u>18</u>	Memorandum in opposition to re <u>14</u> MOTION for Summary Judgment filed by DAVITA INC.. (Attachments: # <u>1</u> Statement of Facts, # <u>2</u> Exhibit 1, # <u>3</u> Exhibit 2, # <u>4</u>

		Exhibit 3)(Elwood, John) (Entered: 01/21/2021)
02/10/2021	<u>19</u>	Memorandum in opposition to re <u>17</u> Cross MOTION for Summary Judgment filed by CENTERS FOR MEDICARE & MEDICAID SERVICES, UNITED STATES DEPARTMENT OF HEALTH & HUMAN SERVICES. (Attachments: # <u>1</u> Declaration Gilmore Supplemental Declaration, # <u>2</u> Statement of Facts Defendants' Response to Plaintiff's Statement of Facts, # <u>3</u> Statement of Facts Defendants' Supplemental Statement of Facts)(Duffey, Thomas) (Entered: 02/10/2021)
02/10/2021	20	REPLY to opposition to motion re <u>14</u> MOTION for Summary Judgment filed by CENTERS FOR MEDICARE & MEDICAID SERVICES, UNITED STATES DEPARTMENT OF HEALTH & HUMAN SERVICES. (View Docket Entry <u>19</u> to view document). (eg) (Entered: 02/11/2021)
02/17/2021	<u>21</u>	REPLY to opposition to motion re <u>17</u> Cross MOTION for Summary Judgment filed by DAVITA INC.. (Attachments: # <u>1</u> Statement of Facts)(Elwood, John) (Entered: 02/17/2021)
03/16/2021	<u>22</u>	ORDER DENYING the defendants' <u>14</u> Motion for Summary Judgment and DENYING the plaintiff's <u>17</u> Cross-Motion for Summary Judgment. See Order for details. Signed by Chief Judge Beryl A. Howell on March 16, 2021. (lcbah3) (Entered: 03/16/2021)
03/16/2021	<u>23</u>	MEMORANDUM OPINION regarding the defendants' <u>14</u> Motion for Summary Judgment and the plaintiff's <u>17</u> Cross-Motion for Summary Judgment. Signed by Chief Judge Beryl A. Howell on March 16, 2021. (lcbah3) (Entered: 03/16/2021)
03/16/2021		Set/Reset Deadlines: Joint Status Report due by 4/16/2021. (ztg) (Entered: 03/16/2021)
04/16/2021	<u>24</u>	Joint STATUS REPORT by DAVITA INC.. (Attachments: # <u>1</u> Exhibit A – Second Supplemental Declaration)(Elwood, John) (Entered: 04/16/2021)
04/19/2021		MINUTE ORDER (paperless) ISSUING, in light of the parties' <u>24</u> Joint Status Report, the following SCHEDULING ORDER to govern the timing of further proceedings in this matter: (1) by May 17, 2021, defendants shall submit a supplemental brief, not to exceed 10 pages, in support of their motion for summary judgment; (2) by May 31, 2021, plaintiff shall submit a combined supplemental brief, not to exceed ten pages, opposing defendants' motion for summary judgment and in support of its cross-motion for summary judgment; (3) by June 7, 2021, defendants shall submit a combined supplemental opposition to plaintiff's cross-motion for summary judgment and reply, not to exceed ten pages; and (4) by June 14, 2021, plaintiff shall submit its supplemental reply, not to exceed five pages. Signed by Chief Judge Beryl A. Howell on April 19, 2021. (lcbah3) (Entered: 04/19/2021)
04/20/2021		Set/Reset Deadlines: Defendants' supplemental brief due by 5/17/2021; plaintiff's combined supplemental brief due by 5/31/2021; defendants' combined supplemental opposition to cross-motion for summary judgment and reply due by 6/7/2021; plaintiff's supplemental reply due by 6/14/2021. (ztg) (Entered: 04/20/2021)
05/13/2021	<u>25</u>	Consent MOTION for Extension of Time to File <i>Supplemental Brief</i> by CENTERS FOR MEDICARE & MEDICAID SERVICES, UNITED STATES DEPARTMENT OF HEALTH & HUMAN SERVICES. (Duffey, Thomas) (Entered: 05/13/2021)
05/14/2021		MINUTE ORDER (paperless) GRANTING the defendants' <u>25</u> Consent Motion for Extension of Time to File Supplemental Brief and MODIFYING the Scheduling Order previously issued in this case, <i>see</i> Min. Order (Apr. 19, 2021), as follows: (1) by June 7, 2021, defendants shall submit a supplemental brief, not to exceed 10 pages, in support of their motion for summary judgment; (2) by June 21, 2021, plaintiff shall submit a combined supplemental brief, not to exceed ten pages, opposing defendants' motion for summary judgment and in support of its cross-motion for summary judgment; (3) by June 28, 2021, defendants shall submit a combined supplemental opposition to plaintiff's cross-motion for summary judgment and reply, not to exceed ten pages; and (4) by July 5, 2021, plaintiff shall submit its supplemental reply, not to exceed five pages. Signed by Chief Judge Beryl A. Howell on May 14, 2021. (lcbah3) (Entered: 05/14/2021)
05/17/2021		Set/Reset Deadlines: Summary judgment motion due by 6/7/2021; cross-motion/opposition to motion for summary judgment due by 6/21/2021;

		opposition to cross-motion/reply to opposition to motion for summary judgment due by 6/28/2021; reply to opposition to cross-motion due by 7/5/2021. (ztg) (Entered: 05/17/2021)
06/07/2021	<u>26</u>	Supplemental MOTION for Summary Judgment by CENTERS FOR MEDICARE & MEDICAID SERVICES, UNITED STATES DEPARTMENT OF HEALTH & HUMAN SERVICES. (Attachments: # <u>1</u> Declaration Exhibit A Amended Second Supplemental Declaration of Hugh Gilmore, # <u>2</u> Exhibit Exhibit B Comments Summary)(Duffey, Thomas) (Entered: 06/07/2021)
06/21/2021	<u>27</u>	STIPULATION of Dismissal (<i>Joint</i>) by DAVITA INC.. (Elwood, John) (Entered: 06/21/2021)
06/22/2021		MINUTE ORDER (paperless) DISMISSING this matter, without prejudice, in light of the parties' <u>27</u> Joint Stipulation of Dismissal, <i>see</i> Fed. R. Civ. P. 41(a)(1)(A)(ii), and DENYING AS MOOT defendants' <u>26</u> Supplemental Motion for Summary Judgment. The Clerk of the Court is directed to close this case. Signed by Chief Judge Beryl A. Howell on June 22, 2021. (lcbah3) (Entered: 06/22/2021)