0610220

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Deborah Platt Majoras, Chairman**
Pamela Jones Harbour
Jon Leibowitz
William E. Kovacic
J. Thomas Rosch

In the Matter of	)	
	)	
JOHNSON & JOHNSON,	)	
a corporation;	)	
	)	**Docket No. C-4180**
and	)	
	)	
PFIZER INC.,	)	
a corporation.	)	
	)	
	)	

DECISION AND ORDER
[Public Record Version]

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition by Respondent Johnson & Johnson ("J&J") of the Consumer Healthcare Division of Respondent Pfizer Inc. ("Pfizer"), hereinafter referred to as "Respondents," and Respondents having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and that, if issued by the Commission, would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders ("Consent Agreement"), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and an Order to Maintain Assets, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order"):

1. Respondent J&J is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its headquarters address located at One Johnson & Johnson Plaza, New Brunswick, New Jersey 08933.

2. Respondent Pfizer is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its headquarters address located at 235 E. 42nd St., New York, New York 10017.

3. The Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in the Order, the following definitions shall apply:

A. "J&J" means Johnson & Johnson, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by J&J, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

B. "Pfizer" means Pfizer Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Pfizer, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

C. "Commission" means the Federal Trade Commission.

D. "Acquirer" means the following:

1. an entity that is specifically identified in this Order to acquire particular assets that the Respondents are required to assign, grant, license, divest, transfer, deliver, or otherwise

convey pursuant to this Order and that has been approved by the Commission to accomplish the requirements of this Order in connection with the Commission's determination to make this Order final; or

2. an entity that receives the prior approval of the Commission to acquire particular assets that the Respondents are required to assign, grant, license, divest, transfer, deliver, or otherwise convey pursuant to this Order.

E. "Acquisition" means the acquisition of Pfizer's Consumer Healthcare Division as contemplated by the "Stock and Asset Purchase Agreement" dated June 25, 2006, between Johnson & Johnson and Pfizer Inc.

F. "Acquisition Date" means the date the Respondents close on the Acquisition.

G. "Agency(ies)" means any governmental regulatory authority or authorities in the world responsible for granting approvals, clearances, qualifications, licenses, or permits for any aspect of the research, Development, manufacture, marketing, distribution, or sale of the Divestiture Products. The term Agency includes, but is not limited to, the United States Food and Drug Administration ("FDA").

H. "Balmex Assets" means all of Respondent J&J's rights, title and interest in and to all assets related to Respondent J&J's United States business related to the Balmex Products to the extent legally transferable, including the research, Development, manufacture, distribution, marketing, and sale of the Balmex Products including, without limitation, the following:

1. all Product Intellectual Property related to the Balmex Products including, but not limited to the Balmex® Product Trademark, or any variations or derivatives of such Product Trademark; *PROVIDED, HOWEVER,* that Respondent J&J may receive a transitional license back for a limited period of time (as is approved by the Commission in the Remedial Agreements related to the Balmex Products) to the Balmex® Product Trademark for the purposes of winding up the use of such Product Trademark in Respondent J&J's businesses associated with such Product Trademark);

2. a non-exclusive, perpetual, transferable, fully paid-up and royalty-free license(s) to all Retained Product Licensed Intellectual Property related to the Balmex Products to use, make, distribute, offer for sale, promote, advertise, sell, import, or have used, made, distributed, offered for sale, promoted, advertised, sold, or imported, the Balmex Products or any line extension thereof anywhere in the United States; *PROVIDED, HOWEVER,* Respondents shall also grant an exclusive (even as to Respondents), perpetual, fully paid-up and royalty-free license(s) with rights to sublicense to the Balmex Patent Applications to use, make, distribute, offer for sale, promote, advertise, sell, import, or have used, made, distributed, offered for sale, promoted, advertised, sold,

or imported, the Balmex Products or any line extensions thereof in the field of OTC diaper rash treatment products anywhere in the United States;

3. all Product Manufacturing Technology related to the Balmex Products;

4. all Product Marketing Materials related to the Balmex Products;

5. all Website(s) related to the Balmex Products;

6. all Product Assumed Contracts to the extent related to the Balmex Products (copies to be provided to the Acquirer on or before the Divestiture Date);

7. all books, records, and files related to the Balmex Products;

8. a list of all customers and/or targeted customers for the Balmex Products and the pricing and promotions and/or planned or proposed pricing and promotions of the Balmex Products for such customers;

9. all inventory in existence as of the Divestiture Date including, but not limited to, raw materials, packaging materials, work-in-process and finished goods related to the Balmex Products;

10. all unfilled customer orders for finished goods as of the Divestiture Date related to the Balmex Products (a list of such orders is to be provided to the Acquirer within two (2) days after the Divestiture Date); and

11. the Balmex Manufacturing Equipment;

PROVIDED, HOWEVER, that in cases in which documents or other materials included in the Balmex Assets contain information (1) that relates both to the Balmex Products and to Retained Products or other businesses of Respondent J&J and cannot be segregated in a manner that preserves the usefulness of the information as it relates to the Balmex Products or (2) for which Respondent J&J has a legal obligation to retain the original copies, Respondent J&J shall be required to provide only copies or relevant excerpts of the documents and materials containing this information. In instances where such copies are provided to the Acquirer, Respondent J&J shall provide the Acquirer access to original documents under circumstances where copies of documents are insufficient for evidentiary or regulatory purposes. The purpose of this proviso is to ensure that Respondent J&J provides the Acquirer with the above-described information without requiring Respondent J&J to completely divest itself of information that, in content, also relates to Retained Products and businesses other than the Balmex Products;

PROVIDED FURTHER, HOWEVER, that with respect to any contract or agreement included in the Balmex Assets that relates both to the Balmex Assets and to any of Respondent J&J Retained Products or businesses not divested pursuant to this Order, Respondent J&J shall assign to the Acquirer all such rights under the contract or agreement as are related to the Balmex Products, but concurrently may retain its rights under such contract or agreement for the purposes of the Retained Products and businesses not divested pursuant to this Order;

PROVIDED FURTHER, HOWEVER, that the assets described in Paragraphs I.H.6, I.H.9, and I.H.11 shall be at the Acquirer's option if the Commission approves a divestiture that excludes such assets.

I. "Balmex Employees" means the persons listed in non-public Appendix D to this Order.

J. "Balmex Manufacturing Equipment" means all manufacturing and other equipment, located at any facility, that:

1. is owned by Respondent J&J; and

2. was used, within the one (1) year period immediately prior to the Acquisition and/or within the one (1) year period immediately prior to the Divestiture Date, in the research, Development, manufacture, or packaging of the Balmex Products.

K. "Balmex Patent Applications" means:

1. USSN 11,216,441 (Anti-inflammatory composition);

2. USSN 11,215,912 (Anti-inflammatory method of use); and

3. US 20005/0202056 (Composition for reducing enzymatic irritation to skin).

L. "Balmex Products" means all Products Developed, in Development, manufactured, distributed, marketed or sold in the United States by Respondent J&J prior to the Acquisition that were marketed or sold or to be marketed or sold in the United States as OTC diaper rash treatment Products using the Product Trademark Balmex® or any variations or derivatives of such Product Trademark including, but not limited to, Balmex® Zinc Oxide Diaper Rash Cream and Balmex® Daily Skin Protectant; *PROVIDED HOWEVER*, Balmex Products does not include any products with the Aveeno® or Johnson® Product Trademarks including, but not limited to, Johnson's® No More Rash® Diaper Rash Cream and Aveeno® Diaper Rash Cream.

M. "BI" means Boehringer Ingelheim Pharmaceuticals, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the state of Delaware, with its headquarters address at 900 Ridgebury Road, Ridgefield, Connecticut 06877-0368.

N. "BI Agreement" means the Asset Purchase Agreement among Johnson & Johnson, Pfizer Inc. and Boehringer Ingelheim Pharmaceuticals, Inc., dated as of October 12, 2006, and amended by letter agreement dated November 27, 2006, and all amendments, exhibits, attachments, agreements, and schedules thereto. The BI Agreement is attached to this Order and contained in non-public Appendix B.

O. "cGMP" means current Good Manufacturing Practice as set forth in the United States Federal, Food, Drug, and Cosmetic Act, as amended, and includes all rules and regulations promulgated by the FDA thereunder.

P. "Chattem" means Chattem, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Tennessee, with its headquarters address at 1715 West 38th Street, Chattanooga, Tennessee 37409.

Q. "Chattem Agreement" means the Asset Purchase Agreement among Johnson & Johnson, Pfizer Inc. and Chattem, Inc., dated as of October 5, 2006, and amended by letter agreement dated November 27, 2006, and all amendments, exhibits, attachments, agreements, and schedules thereto. The Chattem Agreement is attached to this Order and contained in non-public Appendix C.

R. "Chattem Supply Agreement" means the Manufacturing and Supply Agreement among Johnson & Johnson, Pfizer Inc. and Chattem, Inc., appended to the Chattem Agreement as Exhibit D., and all amendments, exhibits, attachments, and schedules thereto.

S. "Confidential Business Information" means all information owned by, or in the possession or control of, Respondents that is not in the public domain and that is related to the research, Development, manufacture, marketing, commercialization, importation, exportation, cost, pricing, supply, sales, sales support or use of the Divestiture Products; *PROVIDED HOWEVER*, that the restrictions contained in this Order regarding the use, conveyance, provision, or disclosure of "Confidential Business Information" shall not apply to the following:

1. information that subsequently falls within the public domain through no violation of this Order or breach of confidentiality or non-disclosure agreement with respect to such information by Respondents;

2. information related to the Balmex Products that Respondent Pfizer can demonstrate it obtained without the assistance of Respondent J&J prior to the Acquisition;

3. information related to the Unisom Products, Cortizone10 Products, and Zantac Products that Respondent J&J can demonstrate it obtained without the assistance of Respondent Pfizer prior to the Acquisition;

4. information that is required by Law to be publically disclosed; or

5. information that does not relate to the Divestiture Products.

T. "Cortizone 10 Assets" means all of Respondent Pfizer's rights, title and interest in and to all assets related to Respondent Pfizer's United States business related to the Cortizone 10 Products to the extent legally transferable, including the research, Development, manufacture, distribution, marketing, and sale of the Cortizone 10 Products including, without limitation, the following:

1. all Product Intellectual Property related to the Cortizone 10 Products including, but not limited to, the Cortizone 10® and Cortizone 5® Product Trademarks, or any variations or derivatives of such Product Trademarks; *PROVIDED, HOWEVER,* that Respondents may receive a transitional license back for a limited period of time (as is approved by the Commission in the Remedial Agreements related to the Cortizone 10 Products) to these Product Trademarks for the purposes of winding up the use of such Product Trademarks in Respondents' businesses associated with such Product Trademarks;

2. a non-exclusive, perpetual, transferable, fully paid-up and royalty-free license(s) to all Retained Product Licensed Intellectual Property related to the Cortizone 10 Products to use, make, distribute, offer for sale, promote, advertise, sell, import, or have used, made, distributed, offered for sale, promoted, advertised, sold, or imported, the Cortizone 10 Products or any line extensions thereof anywhere in the United States;

3. all Product Manufacturing Technology related to the Cortizone 10 Products;

4. all Product Marketing Materials related to the Cortizone 10 Products;

5. all Website(s) related to the Cortizone 10 Products;

6. all Product Assumed Contracts to the extent related to the Cortizone 10 Products (copies to be provided to the Acquirer on or before the Divestiture Date);

7. all books, records, and files related to the Cortizone 10 Products;

8. a list of all customers and/or targeted customers for the Cortizone 10 Products and the pricing and promotions and/or planned or proposed pricing and promotions of the Cortizone 10 Products for such customers;

9. all inventory in existence as of the Divestiture Date including, but not limited to, raw materials, packaging materials, work-in-process and finished goods related to the Cortizone 10 Products;

10. all unfilled customer orders for finished goods as of the Divestiture Date related to the Cortizone 10 Products (a list of such orders is to be provided to the Acquirer within two (2) days after the Divestiture Date); and

11. the Cortizone 10 Manufacturing Equipment;

PROVIDED, HOWEVER, that in cases in which documents or other materials included in the Cortizone 10 Assets contain information (1) that relates both to the Cortizone 10 Products and to Retained Products or other businesses of Respondents and cannot be segregated in a manner that preserves the usefulness of the information as it relates to the Cortizone 10 Products or (2) for which Respondents have a legal obligation to retain the original copies, Respondents shall be required to provide only copies or relevant excerpts of the documents and materials containing this information. In instances where such copies are provided to the Acquirer, Respondents shall provide the Acquirer access to original documents under circumstances where copies of documents are insufficient for evidentiary or regulatory purposes. The purpose of this proviso is to ensure that Respondents provide the Acquirer with the above-described information without requiring Respondents to completely divest itself of information that, in content, also relates to Retained Products and businesses other than the Cortizone 10 Products;

PROVIDED FURTHER, HOWEVER, that with respect to any contract or agreement included in the Cortizone 10 Assets that relates both to the Cortizone 10 Assets and to any of Respondents' Retained Products or businesses not divested pursuant to this Order, Respondents shall assign the Acquirer all such rights under the contract or agreement as are related to the Cortizone 10 Products, but concurrently may retain its rights under such contract or agreement for the purposes of the Retained Products and businesses not divested pursuant to this Order;

PROVIDED FURTHER, HOWEVER, that the assets described in Paragraphs I.T.6, I.T.9, and I.T.11 shall be at the Acquirer's option if the Commission approves a divestiture that excludes such assets.

U. "Cortizone 10 Employees" means persons listed in non-public Appendix E to this Order.

V. "Cortizone 10 Manufacturing Equipment" means all manufacturing and other equipment, located at any facility, that:

1. is owned by Respondent Pfizer; and

2. was used, within the one (1) year period immediately prior to the Acquisition and/or within the one (1) year period immediately prior to the Divestiture Date, in the research, Development, manufacture, or packaging of the Cortizone 10 Products.

W. "Cortizone 10 Products" means all Products Developed, in Development, manufactured, distributed, marketed or sold in the United States by Respondent Pfizer prior to the Acquisition that were marketed or sold or to be marketed or sold in the United States as OTC hydrocortisone anti-itch products using the Cortizone 10® or Cortizone 5® Product Trademarks, or any variations or derivatives of such Product Trademarks, including, but not limited to, Cortizone 10® Quickshot Anti-Itch Spray, Cortizone 10® Creme, Cortizone 10® External Anal Itch Relief Creme, Cortizone 10® Ointment, Cortizone 10® Plus Maximum Strength Creme with 10 Moisturizers, and Cortizone 5® Ointment.

X. "Designee" means any entity other than Respondents that will manufacture a Divestiture Product for an Acquirer.

Y. "Development" means formulation, design (including packaging design), process development, manufacturing scale-up, development-stage manufacturing, quality assurance/quality control development, Product approval and registration. "Develop" means to engage in Development.

Z. "Direct Cost" means a cost not to exceed the cost of direct labor and direct material used to provide the relevant assistance or service; *PROVIDED, HOWEVER*, Direct Cost to the Acquirer for its use of any of the Respondents' employees shall not exceed the average hourly wage rate for such employee.

AA. "Divestiture Assets" means the Zantac Assets and the Non-Zantac Assets.

BB. "Divestiture Date" means as to each Divestiture Product the date on which a Respondent (or a Divestiture Trustee) consummates a transaction to assign, grant, license, divest, transfer, deliver or otherwise convey assets related to such Divestiture Product to an Acquirer pursuant to this Order.

CC. "Divestiture Product Employees" means the Balmex Employees, the Cortizone 10 Employees, the Unisom Employees, and the Zantac Employees.

DD. "Divestiture Products" means any or all of the Zantac Products and the Non-Zantac Products.

EE. "Divestiture Trustee" means the trustee appointed by the Commission pursuant to Paragraph V. of this Order.

FF. "Domain Name" means the domain names (universal resource locators) and registrations thereof, issued by any entity or authority that issues and maintains the domain name registration; *PROVIDED, HOWEVER,* Domain Name shall not include any trademark or service mark rights to such domain names other than the rights to the Product Trademarks related to the Divestiture Products.

GG. "Excluded Assets" means:

1. The following trademarks, including names and logos: Pfizer Inc., Pfizer, Pfizer Consumer Healthcare, Warner-Lambert, Parke-Davis, Pharmacia, Johnson & Johnson, J&J, Johnson's, Johnson & Johnson Consumer Companies, Inc., JJCCI, McNeil, McNeil-PPC, Inc., Personal Products Company, Aveeno, or the names or trade dress of any other corporations, companies, or brands owned or sold by Respondents or related logos to the extent used on or in Respondent J&J's or Respondent Pfizer's Retained Products or businesses not divested pursuant to this Order;

2. The following websites: www.pfizer.com, www.pfizerch.com, www.baby.com, www.jnj.com;

3. Content of Website(s) that is owned by Third Parties and other Product Intellectual Property not owned by Respondents that is incorporated in Website(s), such stock photographs used in the Website(s), *except* to the extent that Respondents can convey its rights, if any, therein;

4. Content of Website(s) that is unrelated to the Divestiture Products;

5. Cash or cash equivalents related to the Divestiture Assets;

6. Accounts receivable related to the Divestiture Assets;

7. Losses, loss carry-forwards, or rights to receive funds, credits or loss carry-forwards with respect to any and all taxes of Respondents that relate to any liability retained by Respondents;

8. Rights, claims, or credits of Respondents relating to any assets or liability being retained by Respondents;

9. Real property relating to the Divestiture Assets;

10. Information management systems used by Respondents;

11. Insurance policies relating to the Divestiture Assets and all rights of any nature with

respect thereto;

12. Attorney work product, attorney client communications and other items protected by the attorney-client privilege;

13. Documents received from third-parties related to the divestiture of the Divestiture Assets;

14. Equipment relating to the distribution of the Divestiture Assets including, but not limited to, equipment at Pfizer distribution facilities at Lititz, PA, Elk Grove, IL, and Reno, NV, and equipment at J&J distribution facilities at Mechanicsburg, PA, Memphis, TN, and Ontario, CA;

15. Property and assets located outside of the United States;

16. Non-finished goods inventory, including raw materials, packaging materials, and work-in-process not directly related to the Divestiture Products;

17. All personnel records; *PROVIDED, HOWEVER,* that the foregoing shall not affect obligations of Respondents under Paragraph II.M. of this Order; and

18. Retained Product Licensed Intellectual Property.

HH. "GSK" means GlaxoSmithKline plc, a corporation headquartered in the United Kingdom, with its principal United States Consumer Products division headquartered at 1000 GSK Drive, Moon Township, PA 15108.

II. "Governmental Entity" means any Federal, state, local or non-U.S. government, or any court, legislature, governmental agency, or governmental commission, or any judicial or regulatory authority of any government.

JJ. "High Volume Retail Account" means any retailer or distributor whose annual and/or projected aggregate annual sales in units or in dollars of a Divestiture Product in the United States on a company-wide level was or is among the top twenty highest of such sales within the United States on any of the following dates: 1) the end of the last quarter that immediately preceded the date of the public announcement of the proposed Acquisition; 2) the end of the last quarter that immediately preceded the Acquisition Date; or 3) the end of the last quarter that immediately preceded the Divestiture Date for the relevant assets.

KK. "Interim Monitor" means any monitor appointed pursuant to Paragraph IV. of this Order or Paragraph III. of the related Order to Maintain Assets.

LL. "Law" means all laws, statutes, rules, regulations, ordinances, and other pronouncements by any Governmental Entity having the effect of law.

MM. "Non-Zantac Assets" means the Balmex Assets, the Cortizone 10 Assets, and the Unisom Assets; *PROVIDED, HOWEVER*, that the Non-Zantac Assets shall not include the Excluded Assets.

NN. "Non-Zantac Divestiture Agreement" means:

1. The Chattem Agreement; or

2. Any agreement that receives the prior approval of the Commission between Respondents and an Acquirer for the divestiture of the Non-Zantac Assets entered into pursuant to Paragraph II.B. of this Order, and any attachments, agreements, and schedules related thereto.

OO. "Non-Zantac Products" means the Balmex Products, the Cortizone 10 Products, and the Unisom Products.

PP. "Non-Zantac Supply Agreement" means:

1. the Chattem Supply Agreement; or

2. any agreement that receives the prior approval of the Commission between Respondents and an Acquirer for the supply of Non-Zantac Products entered pursuant to Paragraph II.C. of this Order, and any attachments, agreements, and schedules thereto.

QQ. "OTC" means, with respect to any Product, an over-the-counter product that contains an active pharmaceutical ingredient and is sold without a prescription from a licensed practitioner.

RR. "Patents" means all United States patents, patent applications, and statutory invention registrations, in each case existing as of the Divestiture Date (*except* where this Order specifies a different time), and includes all reissues, divisions, continuations, continuations-in-part, supplementary protection certificates, extensions and reexaminations thereof, all inventions disclosed therein, all rights therein provided by international treaties and conventions, and all rights to obtain and file for patents and registrations thereto in the United States, related to any Product of or owned by Respondents as of the Divestiture Date.

SS. "Person" means any individual, partnership, joint venture, firm, corporation, association, trust, unincorporated organization, joint venture, or other business or governmental entity, and any subsidiaries, divisions, groups or affiliates thereof.

TT. "Product" means a retail consumer good Developed, made, distributed, marketed or sold by Respondents.

UU. "Product Assumed Contracts" means all of the following contracts or agreements:

1. pursuant to which any Third Party purchases, or has the option to purchase without further negotiation, the Divestiture Products from the Respondents;

2. pursuant to which the Respondents purchase any materials from any Third Party for use in connection with the manufacture of the Divestiture Products;

3. relating to any quality control trials involving the Divestiture Products;

4. relating to the marketing of the Divestiture Products or educational matters relating to the Divestiture Products including, but not limited to, the slotting and/or shelf spacing assignments of the Divestiture Product with the High Volume Retail Accounts;

5. relating to the manufacture of the Divestiture Products;

6. constituting confidentiality agreements involving the Divestiture Products;

7. involving any royalty, licensing, or similar arrangement involving the Divestiture Products;

8. pursuant to which any services are provided with respect to the Divestiture Products or the Divestiture Products business, including consultation arrangements; and/or

9. pursuant to which any Third Party collaborates with the Respondents in the performance of research, Development, marketing or selling of the Divestiture Products or the Divestiture Products business.

VV. "Product Copyrights" means United States rights to all original works of authorship of any kind related to the Divestiture Products and any registrations and applications for registrations thereof existing as of the Divestiture Date, including, but not limited to, the following: all promotional materials for retailers; all promotional materials for customers; copyrights in Development data and reports relating to the research and Development of the Divestiture Products or of any materials used in the research, Development, manufacture, marketing or sale of the Divestiture Products, including all raw data relating to quality trials of the Products, customer information, promotional and marketing materials, the Divestiture Products sales forecasting models, Website content and advertising and display materials; all records relating to employees who accept employment with the Acquirer (excluding any personnel records the transfer of which is prohibited by applicable Law); all records,

including customer lists, sales force call activity reports, vendor lists, sales data, slotting allowance data, speaker lists, manufacturing records, manufacturing processes, and supplier lists; all data contained in laboratory notebooks relating to the Divestiture Products.

WW. "Product Employee Information" means the following, as and to the extent permitted by the Law:

1. a complete and accurate list containing the name of each relevant employee (including former employees who were employed by Respondents within ninety (90) days of the execution date of any Remedial Agreement);

2. with respect to each such employee, the following information:

   a. the date of hire and effective service date;

   b. job title or position held;

   c. a specific description of the employee's responsibilities related to the relevant Divestiture Product; *PROVIDED, HOWEVER*, in lieu of this description, Respondents may provide the employee's most recent performance appraisal;

   d. the base salary or current wages;

   e. the most recent bonus paid, aggregate annual compensation for the Respondent's last fiscal year and current target or guaranteed bonus, if any;

   f. employment status (*i.e.*, active or on leave or disability; full-time or part-time); and

   g. any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly situated employees; and

3. at the Acquirer's option, copies of all employee benefit plans and summary plan descriptions (if any) applicable to the relevant employees.

XX. "Product Intellectual Property" means all of the following related to a Divestiture Product (other than Retained Product Licensed Intellectual Property):

1. Patents;

2. Product Copyrights;

3. Product Trademarks, trade names, Product Trade Dress, trade secrets, know-how,

techniques, data, inventions, practices, methods, and other confidential or proprietary technical, business, research, Development and other information; and

4. rights to obtain and file for patents and registrations thereof.

YY. "Product Manufacturing Technology" means all technology, trade secrets, know-how, and proprietary information (whether patented, patentable or otherwise) related to the manufacture of (including, at the Acquirer's option, information related to all equipment used to manufacture) the Divestiture Products including, but not limited to all product specifications, processes, product designs, plans, trade secrets, ideas, concepts, manufacturing, engineering, and other manuals, and drawings, standard operating procedures, flow diagrams, chemical, safety, quality assurance, quality control, research records, clinical data, compositions, annual product reviews, regulatory communications, and labeling and all other information related to the manufacturing process, and supplier lists.

ZZ. "Product Marketing Materials" means all marketing materials used anywhere in the United States related to the Divestiture Products as of the Divestiture Date, including, without limitation, all advertising materials, training materials, product data, price lists, mailing lists, sales materials (e.g., detailing reports; vendor lists; sales data), marketing information, (e.g., competitor information; research data; market intelligence reports; statistical programs (if any) used for marketing and sales research; customer information, including customer sales information; sales forecasting models; educational materials; Website content and advertising and display materials; speaker lists), promotional and marketing materials, artwork for the production of packaging components, television masters and other similar materials related to the Divestiture Products.

AAA. "Product Trade Dress" means the current trade dress of the Product, including but not limited to, Product packaging, and the lettering of the Product trade name or brand name.

BBB. "Product Trademarks" means all United States proprietary names or designations, trademarks, service marks, tradenames, and brand names, including registrations and applications for registration therefor (and all renewals, modifications, and extensions thereof) and all common law rights, and the goodwill symbolized thereby and associated therewith, for the Products.

CCC. "Releasee(s)" means the Acquirer of the Divestiture Assets or any entity controlled by or under common control with such Acquirer, or any licensees, sub-licensees, manufacturers, suppliers, distributors, and customers of such Acquirer, of such Acquirer-affiliated entities.

DDD. "Remedial Agreement" means:

1. Any agreement related to the Zantac Assets entered into pursuant to Paragraph II.A. of this Order;

2. Any agreement related to the Non-Zantac Assets entered into pursuant to Paragraphs II.B. and II.C. of this Order; and

3. Any agreement entered into by a Divestiture Trustee pursuant to Paragraph V. of this Order.

EEE. "Respondents" means J&J and Pfizer, individually and collectively.

FFF. "Retained Product" means any Product other than a Divestiture Product.

GGG. "Retained Product Licensed Intellectual Property" means the following:

1. Balmex Patent Applications; *PROVIDED, HOWEVER,* Respondents may not use the Balmex Patent Applications for OTC diaper rash treatment Retained Products;

2. Zantac Patents; *PROVIDED, HOWEVER,* Respondents may not use the Zantac Patents for OTC histamine H2-receptor antagonists Retained Products;

3. Patents that are related to a Divestiture Product that Respondents can demonstrate have been routinely used, prior to the Acquisition Date, by either Respondent J&J or Respondent Pfizer (as applicable) for a Retained Product: 1) that has been marketed or sold on an extensive basis by the relevant Respondent within the two-year period immediately preceding the Acquisition; or 2) for which, prior to the announcement of the Acquisition, there was an approved brand or marketing plan to market or sell such a Retained Product on an extensive basis by the Respondents; and

4. trade secrets, know-how, techniques, data, inventions, practices, methods, and other confidential or proprietary technical, business, research, Development, and other information, and all rights in any jurisdiction to limit the use or disclosure thereof, that are related to a Divestiture Product and that Respondents can demonstrate have been routinely used, prior to the Acquisition Date, by either Respondent J&J or Respondent Pfizer (as applicable) for Retained Products that: 1) have been marketed or sold on a extensive basis by the relevant Respondent within the two-year period immediately preceding the Acquisition; or 2) for which, prior to the announcement of the Acquisition, there was an approved brand or marketing plan to market or sell such a Retained Product on an extensive basis by the Respondents;

   PROVIDED HOWEVER, that, in cases where the aggregate retail sales in dollars within the two-year period immediately preceding the Acquisition of the Retained Products

collectively are less than the aggregate retail sales in dollars within the same period of the Divestiture Products collectively, the above-described intellectual property shall be considered, at the Acquirer's option, Product Intellectual Property and, thereby, subject to assignment to the Acquirer;

PROVIDED FURTHER, HOWEVER, that in such cases, Respondents may take a license back from the Acquirer for such intellectual property for use in connection with the Retained Products.

HHH. "Third Party(ies)" means any private entity other than the following: (1) the Respondents; or (2) an Acquirer.

III. "Unisom Assets" means all of Respondent Pfizer's rights, title and interest in and to all assets related to Respondent Pfizer's United States business related to the Unisom Products to the extent legally transferable, including the research, Development, manufacture, distribution, marketing, and sale of the Unisom Products including, without limitation, the following:

1. all Product Intellectual Property related to the Unisom Products including, but not limited to, the "Bendy Girl" character, and the Unisom®, SleepGels® and SleepTabs® Product Trademarks, or any variations or derivatives of such Product Trademarks; *PROVIDED, HOWEVER*, that Respondents may receive a transitional license back for a limited period of time (as is approved by the Commission in the Remedial Agreements related to the Unisom Products) to these Product Trademarks for the purposes of winding up the use of such Product Trademarks in Respondents' businesses associated with such Product Trademarks;

2. a non-exclusive, perpetual, transferable, fully paid-up and royalty-free license(s) to all Retained Product Licensed Intellectual Property related to the Unisom Products to use, make, distribute, offer for sale, promote, advertise, sell, import, or have used, made, distributed, offered for sale, promoted, advertised, sold, or imported, the Unisom Products or any line extension thereof anywhere in the United States;

3. all Product Manufacturing Technology related to the Unisom Products;

4. all Product Marketing Materials related to the Unisom Products;

5. all Website(s) related to the Unisom Products;

6. all Product Assumed Contracts to the extent related to the Unisom Products (copies to be provided to the Acquirer on or before the Divestiture Date);

7. all books, records, and files related to the Unisom Products;

8. a list of all customers and/or targeted customers for the Unisom Products and the pricing and promotions and/or planned or proposed pricing and promotions of the Unisom Products for such customers;

9. all inventory in existence as of the Divestiture Date including, but not limited to, raw materials, packaging materials, work-in-process and finished goods related to the Unisom Products;

10. all unfilled customer orders for finished goods as of the Divestiture Date related to the Unisom Products (a list of such orders is to be provided to the Acquirer within two (2) days after the Divestiture Date); and

11. the Unisom Manufacturing Equipment.

PROVIDED, HOWEVER, that in cases in which documents or other materials included in the Unisom Assets contain information (1) that relates both to the Unisom Products and to Retained Products or other businesses of Respondents and cannot be segregated in a manner that preserves the usefulness of the information as it relates to the Unisom Products or (2) for which Respondents have a legal obligation to retain the original copies, Respondents shall be required to provide only copies or relevant excerpts of the documents and materials containing this information. In instances where such copies are provided to the Acquirer, Respondents shall provide the Acquirer access to original documents under circumstances where copies of documents are insufficient for evidentiary or regulatory purposes. The purpose of this proviso is to ensure that Respondents provide the Acquirer with the above-described information without requiring Respondents to completely divest itself of information that, in content, also relates to Retained Products and businesses other than the Unisom Products;

PROVIDED FURTHER, HOWEVER, that with respect to any contract or agreement included in the Unisom Assets that relates both to the Unisom Assets and to any of Respondents' Retained Products or businesses not divested pursuant to this Order, Respondents shall assign the Acquirer all such rights under the contract or agreement as are related to the Unisom Products, but concurrently may retain its rights under such contract or agreement for the purposes of the Retained Products and businesses not divested pursuant to this Order;

PROVIDED FURTHER, HOWEVER, that the assets described in Paragraphs I.III.6, I.III.9, and I.III.11 shall be at the Acquirer's option if the Commission approves a divestiture that excludes such assets.

JJJ. "Unisom Employees" means the persons listed in non-public Appendix F to this Order.

KKK. "Unisom Manufacturing Equipment" means all manufacturing and other equipment, located at any facility, that:

1. is owned by Respondent Pfizer; and

2. was used, within the one (1) year period immediately prior to the Acquisition and/or within the one (1) year period immediately prior to the Divestiture Date, in the research, Development, manufacture, or packaging of the Unisom Products.

LLL. "Unisom Products" means all Products Developed, in Development, manufactured, distributed, marketed or sold in the United States by Respondent Pfizer prior to the Acquisition that were marketed or sold or to be marketed or sold in the United States as OTC nighttime sleep-aid Products using the Unisom® Product Trademark, or any variations or derivatives of such Product Trademark, including, but not limited to, Unisom® SleepGels® Gelcaps and Unisom® SleepTabs® Tablets.

MMM. "Website(s)" means the content of the Websites located at the Domain Names, and all copyrights in such Websites, to the extent owned by Respondents; *PROVIDED, HOWEVER,* Website shall not include the following: (1) content owned by Third Parties and other Product Intellectual Property not owned by Respondents that are incorporated in such Website, such as stock photographs used in the Website, *except* to the extent that Respondents can convey its rights, if any, therein; or (2) content unrelated to the Divestiture Products.

NNN. "Zantac Assets" means all of Respondent Pfizer's rights, title and interest in and to all assets related to Respondent Pfizer's United States business related to the Zantac Products to the extent legally transferable, including the research, Development, manufacture, distribution, marketing, and sale of the Zantac Products including, without limitation, the following:

1. all Product Intellectual Property related to the Zantac Products including, but not limited to, the Zantac®, Zantac 150® , and Zantac 75® Product Trademarks, or any variations or derivatives of such Product Trademarks; *PROVIDED, HOWEVER,* that Respondents may receive a transitional license back for a limited period of time (as is approved by the Commission in the Remedial Agreements related to the Zantac Products) to these Product Trademarks for the purposes of winding up the use of such Product Trademarks in Respondents' businesses associated with such Product Trademarks;

2. a non-exclusive, perpetual, transferable, fully paid-up and royalty-free license(s) to all Retained Product Licensed Intellectual Property related to the Zantac Products to use, make, distribute, offer for sale, promote, advertise, sell, import, or have used, made,

distributed, offered for sale, promoted, advertised, sold, or imported, the Zantac Products or any line extension thereof anywhere in the United States; *PROVIDED, HOWEVER,* Respondents shall also grant an exclusive (even as to Respondents), perpetual, fully paid-up and royalty-free license(s) with rights to sublicense to the Zantac Patents to use, make, distribute, offer for sale, promote, advertise, sell, import, or have used, made, distributed, offered for sale, promoted, advertised, sold, or imported, the Zantac Products or any line extensions thereof in the field of OTC histamine H2-receptor antagonists products anywhere in the United States;

3. all Product Manufacturing Technology related to the Zantac Products;

4. all Product Marketing Materials related to the Zantac Products;

5. all Website(s) related to the Zantac Products;

6. all Product Assumed Contracts to the extent related to the Zantac Products (copies to be provided to the Acquirer on or before the Divestiture Date);

7. all books, records, and files related to the Zantac Products;

8. a list of all customers and/or targeted customers for the Zantac Products and the pricing and promotions and/or planned or proposed pricing and promotions of the Zantac Products for such customers;

9. all inventory in existence as of the Divestiture Date including, but not limited to, raw materials, packaging materials, work-in-process and finished goods related to the Zantac Products;

10. all unfilled customer orders for finished goods as of the Divestiture Date related to the Zantac Products (a list of such orders is to be provided to the Acquirer within two (2) days after the Divestiture Date); and

11. the Zantac Manufacturing Equipment.

PROVIDED, HOWEVER, that in cases in which documents or other materials included in the Zantac Assets contain information (1) that relates both to the Zantac Products and to Retained Products or other businesses of Respondents and cannot be segregated in a manner that preserves the usefulness of the information as it relates to the Zantac Products; or (2) for which Respondents has a legal obligation to retain the original copies, Respondents shall be required to provide only copies or relevant excerpts of the documents and materials containing this information. In instances where such copies are provided to the Acquirer, Respondents shall provide the Acquirer access to original

documents under circumstances where copies of documents are insufficient for evidentiary or regulatory purposes. The purpose of this proviso is to ensure that Respondents provides the Acquirer with the above-described information without requiring Respondents to completely divest itself of information that, in content, also relates to Retained Products and businesses other than the Zantac Products;

PROVIDED FURTHER, HOWEVER, that with respect to any contract or agreement included in the Zantac Assets that relates both to the Zantac Assets and to any of Respondents' Retained Products or businesses not divested pursuant to this Order, Respondents shall assign the Acquirer all such rights under the contract or agreement as are related to the Zantac Products, but concurrently may retain its rights under such contract or agreement for the purposes of the Retained Products and businesses not divested pursuant to this Order;

PROVIDED FURTHER, HOWEVER, that the assets described in Paragraphs I.NNN.6, I.NNN.9, and I.NNN.11 shall be at the Acquirer's option if the Commission approves a divestiture that excludes such assets.; and

PROVIDED FURTHER, HOWEVER, that Zantac Assets shall not include the Excluded Assets.

OOO. "Zantac Divestiture Agreement" means:

1. The BI Agreement; or

2. Any agreement that receives the prior approval of the Commission between Respondents and an Acquirer for the divestiture of the Zantac Assets entered into pursuant to Paragraph II.A. of this Order, and any attachments, agreements, and schedules related thereto.

PPP. "Zantac Employees" means the persons listed in non-public Appendix G to this Order.

QQQ. "Zantac Marketing Employees" means all salaried management level employees of Respondent Pfizer who directly have participated (irrespective of portion of working time involved, unless such participation was a part of a broad executive management portfolio, or of oversight of legal, accounting, tax or financial compliance) in the formulation of brand marketing or sales strategies, including pricing, discount, allowance, promotion, and advertising strategies relating to the Zantac Products in the United States within the eighteen (18) month period immediately prior to the Divestiture Date. These employees include, without limitation, employees involved in brand management, sales training, and market research, and the Zantac Employees.

RRR. "Zantac Manufacturing Equipment" means all manufacturing and other equipment, located at any facility, that:

1. is owned by Respondent Pfizer; and

2. was used, within the one (1) year period immediately prior to the Acquisition and/or within the one (1) year period immediately prior to the Divestiture Date, in the research, Development, manufacture, or packaging of the Zantac Products.

SSS. "Zantac Patents" means:

1. U.S. Patent 5,098,715 (Flavor film-coated tablets); and

2. Any patent applications and patents issuing from Attorney Docket Number, PC 33462 (Dual-layer film-coated solid dosage form).

TTT. "Zantac Products" means all Products Developed, in Development, manufactured, distributed, marketed or sold in the United States by Respondent Pfizer prior to the Acquisition that were marketed or sold or to be marketed or sold as in the United States OTC histamine H2-receptor antagonists Products using the Product Trademarks Zantac®, Zantac 150® , and Zantac 75®, or any variations or derivatives of such Product Trademark including, but not limited to, Maximum Strength Zantac 150® Acid Reducer, and Zantac 75® Acid Reducer.

UUU. "Zantac Research and Development Employees" means all salaried employees of Respondent Pfizer who directly have participated (irrespective of the portion of working time involved, unless such participation was a part of a broad executive management portfolio, or of oversight of legal, accounting, tax or financial compliance) in the research, Development, or quality control approval process for the Zantac Products within the eighteen (18) month period immediately prior to the Divestiture Date.

II.

IT IS FURTHER ORDERED that:

A. Not later than fifteen (15) days after the Acquisition Date or January 2, 2007, whichever is later, Respondents shall divest the Zantac Assets, absolutely and in good faith, to BI pursuant to and in accordance with the Zantac Divestiture Agreement (which agreement shall not vary or contradict, or be construed to vary or contradict, the terms of this Order, it being understood that nothing in this Order shall be construed to reduce any rights or benefits of BI or to reduce any obligations of the Respondents under such agreement);

PROVIDED, HOWEVER, that if Respondents have divested the Zantac Assets to BI prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondents that BI is not an acceptable purchaser of the Zantac Assets, then Respondents shall immediately rescind the transaction with BI and shall divest the Zantac Assets within one hundred eighty (180) days from the date the Order becomes final, absolutely and in good faith, at no minimum price, to an Acquirer and only in a manner that receives the prior approval of the Commission;

PROVIDED FURTHER, HOWEVER, that if the Respondents have divested the Zantac Assets to BI prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies the Respondents that the manner in which the divestiture was accomplished is not acceptable, the Commission may direct the Respondents, or appoint a Divestiture Trustee, to effect such modifications to the manner of divestiture of the Zantac Assets to BI (including, but not limited to, entering into additional agreements or arrangements) as the Commission may determine are necessary to satisfy the requirements of this Order;

PROVIDED FURTHER, HOWEVER, that Respondents may not modify or amend the Zantac Divestiture Agreement without receiving the prior approval of the Commission.

B. Not later than fifteen (15) days after the Acquisition Date or January 2, 2007, whichever is later, Respondents shall divest the Non-Zantac Assets, absolutely and in good faith, to Chattem pursuant to and in accordance with the Non-Zantac Assets Divestiture Agreement (which agreement shall not vary or contradict, or be construed to vary or contradict, the terms of this Order, it being understood that nothing in this Order shall be construed to reduce any rights or benefits of Chattem or to reduce any obligations of the Respondents under such agreement);

PROVIDED, HOWEVER, that if Respondents have divested the Non-Zantac Assets to Chattem prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondents that Chattem is not an acceptable purchaser of the Non-Zantac Assets, then Respondents shall immediately rescind the transaction with Chattem and shall divest the Non-Zantac Assets within one hundred eighty (180) days from the date the Order becomes final, absolutely and in good faith, at no minimum price, to an Acquirer and only in a manner that receives the prior approval of the Commission;

PROVIDED FURTHER, HOWEVER, that if the Respondents have divested the Non-Zantac Assets to Chattem prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies the Respondents that the manner in which the divestiture was accomplished is not acceptable, the Commission may direct the Respondents, or appoint a Divestiture Trustee, to effect such

modifications to the manner of divestiture of the Non-Zantac Assets to Chattem (including, but not limited to, entering into additional agreements or arrangements) as the Commission may determine are necessary to satisfy the requirements of this Order;

PROVIDED FURTHER, HOWEVER, that Respondents may not modify or amend the Non-Zantac Divestiture Agreement without receiving the prior approval of the Commission.

C. Not later than fifteen (15) days after the Acquisition Date or January 2, 2007, whichever is later, Respondents shall enter into a Non-Zantac Supply Agreement with the Acquirer for the supply of Non-Zantac Products for a period of eighteen (18) months to allow the Acquirer, or a Third Party affiliated with the Acquirer, to obtain all the relevant Agency approvals necessary to manufacture in commercial quantities, and in a manner consistent with cGMP, the Non-Zantac Products independently of Respondents.

PROVIDED, HOWEVER, that Respondents shall supply the Acquirer with Unisom Products sold and marketed under the Unisom SleepTabs® Trademark for a period of thirty (30) months after the Divestiture Date ("Unisom SleepTab Supply Period");

PROVIDED FURTHER, HOWEVER, that if the Acquirer, using commercially reasonable efforts as determined by the Interim Monitor and in consultation with Commission staff, has not received the relevant Agency approvals necessary to manufacture (or to have a Third Party manufacture) in commercial quantities, and in a manner consistent with cGMP, the Unisom Products sold and marketed under the Unisom SleepTabs® Trademark by the end of the Unisom SleepTab Supply Period, then Respondents shall extend the Unisom SleepTab Supply Period for an additional six (6) months

PROVIDED FURTHER, HOWEVER, Respondents may not modify or amend the Non-Zantac Supply Agreement without receiving the prior approval of the Commission.

D. In the event that Respondents divest the Non-Zantac Assets to an Acquirer other than Chattem, the Non-Zantac Supply Agreement shall require Respondents to:

1. deliver, in a timely manner and under reasonable terms and conditions, a supply of Non-Zantac Products;

2. represent and warrant to the Acquirer that Respondents shall hold harmless and indemnify the Acquirer for any liabilities or loss of profits resulting from the failure by Respondents to deliver the Non-Zantac Products in a timely manner as required by the Non-Zantac Supply Agreement unless Respondents can demonstrate that their failure was entirely beyond the reasonable control of Respondents and was in no part the result of negligence or willful misconduct by Respondents;

3. represent and warrant to the Acquirer that the Non-Zantac Products supplied under the Non-Zantac Supply Agreement meet the Agency-approved specifications. For the Non-Zantac Products to be marketed or sold in the United States, Respondents shall agree to indemnify, defend and hold the Acquirer harmless from any and all suits, claims, actions, demands, liabilities, expenses or losses alleged that result from the failure of the Non-Zantac Products to meet cGMP. This obligation may be made contingent upon the Acquirer giving Respondents prompt, adequate notice of such claim and cooperating fully in the defense of such claim. *PROVIDED, HOWEVER,* that Respondents may reserve the right to control the defense of any such litigation, including the right to settle the litigation, so long as such settlement is consistent with Respondents' responsibilities to supply the ingredients in the manner required by this Order; *PROVIDED FURTHER, HOWEVER,* that this obligation shall not require Respondents to be liable for any negligent act or omission of the Acquirer or for any representations and warranties, express or implied, made by the Acquirer that exceed the representations and warranties made by Respondents to the Acquirer;

4. make available to the Acquirer and the Interim Monitor all records that relate to the manufacture of the Non-Zantac Products that are generated or created after the Divestiture Date;

5. include in the Non-Zantac Supply Agreement a representation from the Acquirer that such Acquirer shall use commercially reasonable efforts to secure the FDA approvals necessary to manufacture, or to have manufactured by a Third Party, in commercial quantities, the Non-Zantac Products and to do so independently of Respondents as soon as reasonably practicable; and

6. not seek, pursuant to any dispute resolution mechanism incorporated in the Non-Zantac Supply Agreement, a result that would be inconsistent with the terms or the remedial purposes of this Order.

E. Any Remedial Agreement relating to the Divestiture Assets shall be deemed incorporated into this Order, and any failure by Respondents to comply with any term of such Remedial Agreement as it relates to the Divestiture Assets shall constitute a failure to comply with this Order. Respondents shall include in each Remedial Agreement related to the Divestiture Products a specific reference to this Order, and the remedial purposes thereof.

F. Prior to the Divestiture Date, Respondents shall secure all assignments, consents, and waivers from all Third Parties, including rights of approval and rights of first refusal, from all private and Governmental Entities including, but not limited to, GSK's approval for the divestiture of the Zantac Assets, that are necessary:

1. for the divestiture of the Divestiture Assets; or

2. for the continued research, Development, manufacture, sale, marketing or distribution of the Divestiture Products;

   PROVIDED, HOWEVER, Respondents may satisfy the requirements of this Paragraph II.F. by certifying that the relevant Acquirer has executed all such agreements directly with each of the relevant Third Parties;

   PROVIDED FURTHER, HOWEVER, that in the event Respondents are unable to satisfy all conditions necessary to divest any intangible asset that is a permit, license, or right granted by any Governmental Entity, Respondents shall provide such assistance as the relevant Acquirer may reasonably request in that Acquirer's efforts to obtain such permit, license, or right, or to obtain a comparable permit, license, or right.

G. Respondents shall do the following and, in addition, include in the Zantac Divestiture Agreement and the Non-Zantac Divestiture Agreement the provisions to the following effect:

   1. upon reasonable notice and request from the relevant Acquirer to the Respondents, Respondents shall provide in a timely manner at no greater than Direct Cost the following assistance or consultation related to the Divestiture Products:

      a. assistance and advice to enable that Acquirer (or the Designee of that Acquirer) to obtain all necessary permits and approvals from any Agency or Governmental Entity to manufacture and sell the relevant Divestiture Products;

      b. assistance to that Acquirer (or the Designee of that Acquirer) to manufacture the relevant Divestiture Products in substantially the same manner and quality employed or achieved by or on behalf of Respondents; and

      c. consultation with knowledgeable employees of Respondents and training, at the request of that Acquirer and at a facility chosen by that Acquirer sufficient to satisfy management of that Acquirer that its personnel (or the Designee's personnel) are adequately trained in the manufacture of the relevant Divestiture Products;

   2. upon reasonable notice and request from the relevant Acquirer to Respondents, Respondents shall provide, in a timely manner, at no greater than Direct Cost, assistance of knowledgeable employees of the Respondents to assist that Acquirer to defend against, respond to, or otherwise participate in any litigation related to the Product Intellectual Property;

   3. Respondents shall covenant to the relevant Acquirer that Respondents shall:

a. not join, file, prosecute or maintain any suit, in law or equity, against the Acquirer under Patents that are owned or licensed by Respondents as of the Acquisition Date, if such suit would have the potential to interfere with that Acquirer's freedom to practice in the research, Development, manufacture, use, import, distribution, or sale of the relevant Divestiture Products; *PROVIDED, HOWEVER*, that Respondents may receive a covenant from that Acquirer not to assert any Patent related to the Divestiture Products that is assigned to that Acquirer from the Respondents pursuant to this Order against the Respondents for Respondents' infringement of such Patent in connection with those Products marketed or sold by Respondents prior to the Acquisition Date;

b. not use any Confidential Business Information related to the Divestiture Products obtained by Respondents from any person who was an employee of (1) Respondent Pfizer if such employee was involved with the Zantac Assets, Cortizone 10 Assets, or the Unisom Assets, or (2) Respondent J&J if such employee was involved with the Balmex Assets, within the two (2) year period immediately prior to the Acquisition in any suit against that Acquirer under Patents that are owned or licensed by Respondents as of the Acquisition Date, if such suit would have the potential to interfere with that Acquirer's freedom to practice in the research, Development, manufacture, use, import, distribution or sale of the relevant Divestiture Products acquired by that Acquirer;

4. Respondents shall covenant to the relevant Acquirer that: (1) as a condition of any assignment, transfer or license to a Third Party of the Patents, as described in Paragraph II.G.3.a., the Third Party shall agree to provide a covenant whereby the Third Party covenants not to sue the Releasees under such Patents, if the suit would have the potential to interfere with that Acquirer's freedom to practice in the research, Development, manufacture, use, import, distribution, or sale of the relevant Divestiture Products; and (2) with respect to any Third Party rights licensed to Respondents as of or after the Acquisition Date, and as to which Respondents do not control the right of prosecution of any legal action, Respondents shall not actively induce, assist, or participate in any legal action or proceeding relating to the relevant Divestiture Products against the Releasees, unless required by Law or contract (such contract not to be solicited or entered into for the purpose of circumventing any of the requirements of this Order).

H. As related to the Divestiture Products, Respondents shall:

1. submit and deliver to the relevant Acquirer, at Respondents' expense, in good faith and as soon as practicable, in a manner that ensures its completeness and accuracy, all Confidential Business Information;

2. provide the relevant Acquirer and the Interim Monitor with access to all Confidential Business Information and to employees who possess or are able to locate or identify the books, records, and files that contain Confidential Business Information pending complete delivery of all the Confidential Business Information;

3. not use, directly or indirectly, any Confidential Business Information related to the research, Development, manufacturing, marketing, or sale of the Divestiture Products other than to comply with the requirements of this Order;

4. not disclose or convey any Confidential Business Information, directly or indirectly, to any person except the relevant Acquirer; and

5. not provide, disclose or otherwise make available, directly or indirectly, any Confidential Business Information related to the marketing or sales of the:

   a. Balmex Products to Respondents' employees associated with Respondents' retained OTC diaper rash treatment business;

   b. Unisom Products to Respondents' employees associated with Respondents' retained OTC nighttime sleep-aids business;

   c. Cortizone 10 Products to Respondents' employees associated with Respondents' retained OTC hydrocortisone anti-itch products business; and

   d. Zantac Products to Respondents' employees associated with Respondents' OTC histamine H2-receptor antagonists products business.

I. Not later than thirty (30) days after the Acquisition Date, Respondents shall provide written notification of the restrictions on the use of the Confidential Business Information by Respondents' personnel to all of Respondents' employees who:

1. Are, or were, directly involved in the research, Development, manufacturing, distribution, sale or marketing of the Divestiture Products;

2. Are directly involved in the research, Development, manufacturing, distribution, sale or marketing of Respondents' Retained Products related to OTC diaper rash treatments, OTC nighttime sleep-aids, OTC hydrocortisone anti-itch products, or OTC histamine H2-receptor antagonists products; and/or

3. May have Confidential Business Information;

PROVIDED, HOWEVER, Respondents shall give such notification by e-mail with return

receipt requested or similar transmission, and keep a file of such receipts for one (1) year after the relevant Divestiture Date. Respondents shall maintain complete records of all such agreements at Respondents' corporate headquarters, and provide an officer's certification to the Commission stating that such acknowledgment program has been implemented and is being complied with. Respondents shall provide the relevant Acquirer with copies of all certifications, notifications and reminders sent to Respondents' personnel relating to the Divestiture Products.

J. Respondents shall prohibit any former Zantac Marketing Employees and former Zantac Research and Development Employees from participating in the sales, marketing, or research and Development of Respondents' OTC histamine H2-receptor antagonists Retained Products for a period of two (2) years after the Divestiture Date.

K. Respondents shall not enforce any agreement against a Third Party or an Acquirer to the extent that such agreement may limit or otherwise impair the ability of that Acquirer to acquire the Product Manufacturing Technology related to the relevant Divestiture Products or related equipment from the Third Party. Such agreements include, but are not limited to, agreements with respect to the disclosure of Confidential Business Information related to such Product Manufacturing Technology.

L. Not later than ten (10) days after the Divestiture Date, Respondents shall grant a release to each Third Party that is subject to an agreement as described in Paragraph II.K. that allows the Third Party to provide the relevant Product Manufacturing Technology or related equipment to an Acquirer. Within five (5) days of the execution of each such release, Respondents shall provide a copy of the release to the Acquirer.

M. Respondents shall:

1. for a period of at least six (6) months from the Divestiture Date ("Divestiture Product Employee Access Period"), provide the relevant Acquirer of the Divestiture Assets with the opportunity to enter into employment contracts with the related Divestiture Products Employees; and

2. provide the relevant Acquirer of the Divestiture Assets with the Product Employee Information related to the Divestiture Product Employees not later than the earlier of the following dates:

   a. ten (10) days after notice by staff of the Commission to the Respondents to provide the Product Employee Information; or

   b. ten (10) days after the Divestiture Date.

Failure by Respondents to provide the Product Employee Information for any relevant employee within the time provided herein shall extend the Divestiture Employee Access Period with respect to that employee in an amount equal to the delay.

N. Respondents shall:

1. during the Divestiture Product Employee Access Period, not interfere with the hiring or employing by the relevant Acquirer of the Divestiture Assets of Divestiture Product Employees and remove any impediments within the control of Respondents that may deter these employees from accepting employment with such Acquirer, including, but not limited to, any noncompete or nondisclosure provisions of employment or other contracts with Respondents that would affect the ability or incentive of those individuals to be employed by such Acquirer. In the case of the Divestiture Product Employees, Respondents shall waive, for the benefit of the relevant Acquirer of the Divestiture Assets, any attorney-client privilege as it pertains to the Divestiture Products. In addition, Respondents shall not make any counteroffer to any of the Divestiture Product Employees who receives a written offer of employment from the relevant Acquirer of Divestiture Assets;

   PROVIDED, HOWEVER, that this Paragraph II.N.1 shall not prohibit the Respondents from making offers of employment to or employing any Divestiture Product Employees during the Divestiture Product Employee Access Period where the relevant Acquirer of the Divestiture Assets has notified the Respondents in writing that it does not intend to make an offer of employment to that employee;

   PROVIDED FURTHER, HOWEVER, that if the Respondents notify the relevant Acquirer of the Divestiture Assets in writing of their desire to make an offer of employment to a particular Divestiture Product Employee, and that Acquirer does not make an offer of employment to such employee within twenty (20) days of the date that Acquirer receives such notice, the Respondents may make an offer of employment to that employee;

2. until the Divestiture Date, provide all Divestiture Product Employees with reasonable financial incentives to continue in their positions and to market and promote the Divestiture Products consistent with past practices and/or as may be necessary to preserve the marketability, viability and competitiveness of the Divestiture Products and to ensure successful execution of the pre-Acquisition marketing plans related to the Divestiture Products. Such incentives shall include a continuation of all employee compensation and benefits offered by Respondents until the Divestiture Date for the divestiture of the Divestiture Assets has occurred, including regularly scheduled raises, bonuses, and vesting of pension benefits (as permitted by Law);

PROVIDED, HOWEVER, that nothing in this Order requires or shall be construed to require the Respondents to terminate the employment of any employee or prevent Respondents from continuing the employment of Divestiture Product Employees (other than those conditions contained in this Order) in connection with the Acquisition; and

3. for a period of one (1) year from the Divestiture Date, not:

   a. directly or indirectly, solicit or otherwise attempt to induce any employee of an Acquirer with any amount of responsibility related to the Divestiture Products ("Acquirer Employee") to terminate his or her employment relationship with that Acquirer; or

   b. hire any Acquirer Employee; *PROVIDED, HOWEVER,* Respondents may hire any former Acquirer Employee whose employment has been terminated by an Acquirer or who independently applies for employment with the Respondents, as long as such employee was not solicited in violation of the non-solicitation requirements contained herein;

   PROVIDED, HOWEVER, Respondents may do the following: (1) advertise for employees in newspapers, trade publications or other media not targeted specifically at the Acquirer Employees; or (2) hire an Acquirer Employee who contacts Respondents on his or her own initiative without any direct or indirect solicitation or encouragement from the Respondents.

O. Respondents shall require, as a condition of continued employment post-divestiture of the Divestiture Assets, that each Divestiture Product Employee retained by Respondents, the direct supervisor(s) of any such employee, and any other employee retained by Respondents and designated by the Interim Monitor, sign a confidentiality agreement pursuant to which such employee shall be required to maintain all Confidential Business Information related to the Divestiture Products strictly confidential, including the nondisclosure of such information to all other employees, executives, or other personnel of Respondents (other than as necessary to comply with the requirements of this Order).

P. Upon reasonable notice and request by the Acquirer, Respondents shall make available to the relevant Acquirer of the Divestiture Assets, at no greater than Direct Cost, such personnel, assistance, and training as that Acquirer might reasonably need to transfer the Divestiture Assets, and shall continue providing such personnel, assistance and training, at the request of such Acquirer until the Divestiture Assets are completely transferred to such Acquirer or its Designee in a manner that fully preserves their usefulness.

Q. Pending divestiture of the Divestiture Assets, Respondents shall take such actions as are necessary to maintain the full economic viability and marketability of the business

associated with the Divestiture Assets, to minimize any risk of loss of competitive potential for such business, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Divestiture Assets except for ordinary wear and tear.

R. Respondents shall not join, file, prosecute or maintain any suit, in law or equity, against an Acquirer or the Releasee(s) for the research, Development, manufacture, use, import, distribution, or sale of the relevant Divestiture Products in connection with that Acquirer's research, Development, manufacture, use, import, distribution, or sale of the related Divestiture Products under the following:

1. any Patents owned or licensed by Respondents as of the Acquisition Date that claim the use of the Divestiture Products;

2. any Patents owned or licensed at any time after the Acquisition Date by Respondents that claim any aspect of the research, Development, manufacture, use, import, distribution, or sale of the Divestiture Products, other than such Patents that claim inventions conceived by and reduced to practice after the Acquisition Date.

S. Respondents shall not join, file, prosecute or maintain any suit, in law or equity, against an Acquirer for the research, Development, manufacture, use, import, distribution, or sale of the relevant Divestiture Products in connection with that Acquirer's research, Development, manufacture, use, import, distribution, or sale of such Divestiture Products using any Confidential Business Information related to the Divestiture Products obtained by Respondents from any person who was an employee of (1) Respondent Pfizer if such employee was involved with the Zantac Assets, Cortizone 10 Assets, or the Unisom Assets, or (2) Respondent J&J if such employee was involved with the Balmex Assets, within the two (2) year period immediately prior to the Acquisition.

T. Respondents shall not, in any jurisdiction throughout the United States (1) use the Product Trademarks related to the Divestiture Products or any mark confusingly similar to such Product Trademarks, as a trademark, tradename, or service mark; (2) attempt to register such Product Trademarks; (3) attempt to register any mark confusingly similar to such Product Trademarks; (4) challenge or interfere with the relevant Acquirer's use and registration of such Product Trademarks; or (5) challenge or interfere with the relevant Acquirer's efforts to enforce its trademark registrations for and trademark rights in such Product Trademarks against Third Parties; *PROVIDED HOWEVER*, that nothing in this Order shall preclude Respondents from continuing to use those trademarks, tradenames, or service marks related to the Retained Products as of the Acquisition Date.

U. The purpose of the divestiture of the Divestiture Assets is to ensure the continued use of the Divestiture Assets in the same business, independent of Respondents, in which the Divestiture Assets were engaged at the time of the announcement of the Acquisition, and to

remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

III.

IT IS FURTHER ORDERED that Respondents shall assure that, in any instance wherein their counsel (including in-house counsel under appropriate confidentiality arrangements) either retain unredacted copies of documents or other materials provided to the Acquirers or access original documents (under circumstances where copies of documents are insufficient or otherwise unavailable) provided to the Acquirers, that Respondents' counsel do so only in order to do the following:

A. comply with any Remedial Agreement, this Order, any Law (including, without limitation, any requirement to obtain regulatory licenses or approvals), any data retention requirement of any applicable Government Entity, or any taxation requirements; or

B. defend against, respond to, or otherwise participate in any litigation, investigation, audit, process, subpoena, or other proceeding relating to the divestiture or any other aspect of the Divestiture Products or assets and businesses associated with those Divestiture Products; *PROVIDED, HOWEVER*, that Respondents may disclose such information as necessary for the purposes set forth in this Paragraph pursuant to an appropriate confidentiality order, agreement, or arrangement;

PROVIDED, HOWEVER, that pursuant to this Paragraph III., Respondents shall: (1) require those (other than Governmental Entities) who view such unredacted documents or other materials to enter into confidentiality agreements with the relevant Acquirer (but shall not be deemed to have violated this requirement if that Acquirer withholds such agreement unreasonably); (2) inform any Governmental Entities who seek to view any documents or materials that are retained or accessed by Respondents of Respondents' obligation to keep such information confidential, and give the relevant Acquirer as much prior notice of complying with such request from the Governmental Entity as is reasonable in the circumstances, subject to any requirements of law; and (3) to use their best efforts to obtain a protective order to protect the confidentiality of such information during any adjudication.

PROVIDED FURTHER, HOWEVER, that this Paragraph III. does not restrict the use by the Respondents of the documents retained by Respondents that may contain information about both the Divestiture Products, as described in the definitions of the Zantac Assets and Non-Zantac Assets in Paragraph I., and Respondents' Retained Products or other businesses.

IV.

IT IS FURTHER ORDERED that:

A. David Painter of LECG shall serve as the monitor ("Interim Monitor") to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by this Order, the Order to Maintain Assets, and the Remedial Agreements.

B. If Mr. Painter fails to serve, or if a new Interim Monitor must be selected, the Commission shall select the Interim Monitor, subject to the consent of Respondent J&J, which consent shall not be unreasonably withheld. If Respondent J&J has not opposed, in writing, including the reasons for opposing, the selection of a proposed Interim Monitor within ten (10) days after notice by the staff of the Commission to Respondent J&J of the identity of any proposed Interim Monitor, Respondents shall be deemed to have consented to the selection of the proposed Interim Monitor.

C. Not later than ten (10) days after the appointment of the Interim Monitor, Respondents shall execute an agreement that, subject to the prior approval of the Commission, confers on the Interim Monitor all the rights and powers necessary to permit the Interim Monitor to monitor Respondents' compliance with the relevant requirements of the Order in a manner consistent with the purposes of the Order.

D. Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Interim Monitor:

1. The Interim Monitor shall have the power and authority to monitor Respondents' compliance with the divestiture and asset maintenance obligations and related requirements of the Order, and shall exercise such power and authority and carry out the duties and responsibilities of the Interim Monitor in a manner consistent with the purposes of the Order and in consultation with the Commission.

2. The Interim Monitor shall act in a fiduciary capacity for the benefit of the Commission.

3. The Interim Monitor shall serve until the later of:

    a. the completion by Respondents of the divestiture of all relevant assets required to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed pursuant to this Order in a manner that fully satisfies the requirements of the Order and notification by the Acquirer to the Interim Monitor that it is fully capable of producing the relevant Products acquired pursuant to a Remedial Agreement independently of Respondents; or

b. the completion by Respondents of the last obligation under the Order pertaining to the Interim Monitor's service;

PROVIDED, HOWEVER, that the Commission may extend or modify this period as may be necessary or appropriate to accomplish the purposes of the Order.

4. Subject to any demonstrated legally recognized privilege, the Interim Monitor shall have full and complete access to Respondents' personnel, books, documents, records kept in the normal course of business, facilities and technical information, and such other relevant information as the Interim Monitor may reasonably request, related to Respondents' compliance with their obligations under the Order, including, but not limited to, their obligations related to the relevant assets. Respondents shall cooperate with any reasonable request of the Interim Monitor and shall take no action to interfere with or impede the Interim Monitor's ability to monitor Respondents' compliance with the Order.

5. The Interim Monitor shall serve, without bond or other security, at the expense of Respondent J&J on such reasonable and customary terms and conditions as the Commission may set. The Interim Monitor shall have authority to employ, at the expense of Respondent J&J, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Interim Monitor's duties and responsibilities.

6. Respondent J&J shall indemnify the Interim Monitor and Respondents shall hold the Interim Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Interim Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Interim Monitor.

7. Respondents shall report to the Interim Monitor in accordance with the requirements of this Order and/or as otherwise provided in any agreement approved by the Commission. The Interim Monitor shall evaluate the reports submitted to the Interim Monitor by Respondents, and any reports submitted by the Acquirer with respect to the performance of Respondents' obligations under the Order or the Remedial Agreement. Within thirty (30) days from the date the Interim Monitor receives these reports, the Interim Monitor shall report in writing to the Commission concerning performance by Respondents of their obligations under the Order.

8. Respondents may require the Interim Monitor and each of the Interim Monitor's

consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; *PROVIDED, HOWEVER,* that such agreement shall not restrict the Interim Monitor from providing any information to the Commission.

E. The Commission may, among other things, require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Interim Monitor's duties.

F. If the Commission determines that the Interim Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Interim Monitor in the same manner as provided in this Paragraph.

G. The Commission may on its own initiative, or at the request of the Interim Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Order.

H. The Interim Monitor appointed pursuant to this Order may be the same person appointed as a Divestiture Trustee pursuant to the relevant provisions of this Order.

V.

IT IS FURTHER ORDERED that:

A. If Respondents have not fully complied with their obligations under Paragraph II. of this Order, the Commission may appoint a trustee ("Divestiture Trustee") to assign, grant, license, divest, transfer, deliver, or otherwise convey the assets required to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed pursuant to each of the relevant Paragraphs in a manner that satisfies the requirements of each such Paragraph. In the event that the Commission or the Attorney General brings an action pursuant to § 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. § 45(*l*), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a Divestiture Trustee in such action to assign, grant, license, divest, transfer, deliver, or otherwise convey the relevant assets. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(*l*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondents to comply with this Order.

B. The Commission shall select the Divestiture Trustee, subject to the consent of Respondent J&J, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondent J&J has not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondent J&J of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.

C. Not later than ten (10) days after the appointment of a Divestiture Trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the divestiture required by this Order.

D. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:

1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver, or otherwise convey the assets that are required by this Order to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed.

2. The Divestiture Trustee shall have one (1) year after the date the Commission approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the one (1) year period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission; *PROVIDED, HOWEVER*, the Commission may extend the divestiture period only two (2) times.

3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered, or otherwise conveyed by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondents shall Develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.

4. The Divestiture Trustee shall use commercially reasonable efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to an acquirer as required by this Order; *PROVIDED, HOWEVER*, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by Respondent from among those approved by the Commission; and, *PROVIDED FURTHER, HOWEVER*, that Respondents shall select such entity within five (5) days after receiving notification of the Commission's approval.

5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondent J&J, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondent J&J, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of Respondent J&J, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.

6. Respondent J&J shall indemnify the Divestiture Trustee and Respondents shall hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee.

7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order; *PROVIDED, HOWEVER*, that the Divestiture Trustee appointed pursuant to this Paragraph may be the same Person appointed as Interim Monitor pursuant to the relevant provisions of this Order and the Order to Maintain Assets in this matter.

8. The Divestiture Trustee shall report in writing to Respondents and to the Commission

every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.

9. Respondents may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; *PROVIDED, HOWEVER,* such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.

E. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph.

F. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

VI.

IT IS FURTHER ORDERED that:

A. Within five (5) days of the Acquisition, Respondent J&J shall submit to the Commission a letter certifying the date on which the Acquisition occurred.

B. Within thirty (30) days after the date this Order becomes final, and every sixty (60) days thereafter until Respondents have fully complied with the following:

1. Paragraph II. of this Order; and

2. all its responsibilities to render transitional services to the relevant Acquirer as provided by this Order and the Remedial Agreements;

Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with this Order. Respondents shall submit at the same time a copy of their reports concerning compliance with this Order to the Interim Monitor, if any Interim Monitor has been appointed. Respondents shall include in their reports, among other things that are required from time to time, a full description of the efforts being made to comply with the relevant Paragraphs of this Order, including a full description of all substantive contacts or negotiations related to the divestiture of the relevant assets and the identity of all Persons contacted, including, copies of all written communications to and from such Persons, all

internal memoranda, and all reports and recommendations concerning completing the obligations.

C. One (1) year after the date this Order becomes final, annually for the next nine (9) years on the anniversary of the date this Order becomes final, and at other times as the Commission may require, Respondent J&J shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with the Order.

VII.

IT IS FURTHER ORDERED that Respondent J&J shall notify the Commission at least thirty (30) days prior to:

A. any proposed dissolution of Respondent J&J;

B. any proposed acquisition, merger or consolidation of Respondent J&J; or

C. any other change in Respondent J&J including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Order.

VIII.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to Respondents made to their principal United States offices or headquarters address, Respondents shall, without restraint or interference, permit any duly authorized representative of the Commission:

A. access, during business office hours of Respondents and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondent related to compliance with this Order, which copying services shall be provided by Respondents at the request of the authorized representative(s) of the Commission; and

B. to interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

IX.

IT IS FURTHER ORDERED that this Order shall terminate on January 16, 2017.

By the Commission, Commissioner Harbour, Commissioner Kovacic, and Commissioner Rosch recused.

Donald S. Clark
Secretary

SEAL
ISSUED: January 16, 2007

NON-PUBLIC APPENDIX A

MONITOR AGREEMENT

[Redacted From the Public Record Version But Incorporated By Reference]

NON-PUBLIC APPENDIX B

ZANTAC DIVESTITURE AGREEMENT
BI AGREEMENT

[Redacted From the Public Record Version But Incorporated By Reference]

NON-PUBLIC APPENDIX C

NON-ZANTAC DIVESTITURE AGREEMENT
CHATTEM AGREEMENT

NON-ZANTAC SUPPLY AGREEMENT
CHATTEM SUPPLY AGREEMENT

[Redacted From the Public Record Version But Incorporated By Reference]

NON-PUBLIC APPENDIX D

BALMEX EMPLOYEES

[Redacted From the Public Record Version But Incorporated By Reference]

NON-PUBLIC APPENDIX E

CORTIZONE 10 EMPLOYEES

[Redacted From the Public Record Version But Incorporated By Reference]

NON-PUBLIC APPENDIX F

UNISOM EMPLOYEES

[Redacted From the Public Record Version But Incorporated By Reference]

NON-PUBLIC APPENDIX G

ZANTAC EMPLOYEES

[Redacted From the Public Record Version But Incorporated By Reference]