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**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

**COMMISSIONERS: Maureen K. Ohlhausen, Acting Chairman
 Terrell McSweeney**

the Commission hereby issues its Complaint, makes the following jurisdictional findings, and issues this Order to Maintain Assets:

1. Respondent Abbott is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Illinois, with its principal executive offices located at 100 Abbott Park Road, Abbott Park, Illinois 60064.
2. Respondent Alere is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Delaware, with its principal executive offices located at 51 Sawyer Road, Suite 200, Waltham, Massachusetts 02453.
3. The Commission has jurisdiction over the subject matter of this proceeding and over the Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order to Maintain Assets, the following definitions and the definitions used in the Consent Agreement and the proposed Decision and Order (and when made final and effective, the Decision and Order), which are incorporated herein by reference and made a part hereof, shall apply:

- A. “Abbott” means Abbott Laboratories; its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups, and affiliates, in each case controlled by Abbott Laboratories, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. After the Acquisition, Abbott shall include Alere.
- B. “Alere” means Alere Inc.; its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups, and affiliates, in each case controlled by Alere Inc. (including, without limitation, Epocal Inc.), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. For the purposes of the definitions in this Order to Maintain Assets, “Alere” does not include “Abbott”.
- C. “Commission” means the Federal Trade Commission.
- D. “Respondent(s)” means Abbott and Alere, individually and collectively.

- B. Until Respondents fully transfer and deliver each of the respective Divestiture Product Assets to an Acquirer, Respondents shall maintain the operations of the related Divestiture Product Businesses in the regular and ordinary course of business and in accordance with past practice (including regular repair and maintenance of the assets of such business) and/or as may be necessary to preserve the full economic viability, marketability, and competitiveness of such Divestiture Product Businesses and shall use their best efforts to preserve the existing relationships with the following: suppliers; vendors and distributors; High Volume Accounts; end-use customers; Agencies; employees; and others having business relations with each of the respective Divestiture Product Businesses. Respondents' responsibilities shall include, but are not limited to, the following:
1. providing each of the respective Divestiture Product Businesses with sufficient working capital to operate at least at current rates of operation, to meet all capital calls with respect to such business and to carry on, at least at their scheduled pace, all capital projects, business plans, and promotional activities for such Divestiture Product Business;
 2. continuing, at least at their scheduled pace, any additional expenditures for each of the respective Divestiture Product Businesses authorized prior to the date the Consent Agreement was signed by the Respondents, including, but not limited to, all research, Development, manufacturing, distribution, marketing, and sales expenditures;
 3. providing such resources as may be necessary to respond to competition against each of the Divestiture Products and/or to prevent any diminution in sales of each of the Divestiture Products during and after the Acquisition process and prior to the complete transfer and delivery of the related Divestiture Product

- C. Until Respondents fully transfer and deliver each of the respective Divestiture Product Assets to an Acquirer, Respondents shall maintain a work force that is (i) at least as large in size (as measured in full time equivalents) as, and (ii) comparable in training, and expertise to, what has been associated with the Divestiture Products for the relevant Divestiture Product's last fiscal year.
- D. For each Acquirer of a Divestiture Product, Respondents shall:
1. for a period of six (6) months after the Closing Date, provide each Acquirer or its Manufacturing Designee with the opportunity to enter into employment contracts with the Divestiture Product Core Employees related to the Divestiture Products and Divestiture Product Assets acquired by that Acquirer. Each of these periods is hereinafter referred to as the "Divestiture Product Core Employee Access Period(s);"
 2. not later than the earlier of the following dates: (i) ten (10) days after notice by staff of the Commission to the relevant Respondent to provide the Product Employee Information; or (ii) ten (10) days after written request by an Acquirer, provide that Acquirer or Proposed Acquirer(s) with the Product Employee Information related to the Divestiture Product Core Employees. Failure by that Respondent to provide the Product Employee Information for any Divestiture Product Core Employee within the time provided herein shall extend the Divestiture Product Core Employee Access Period(s) with respect to that employee in an amount equal to the delay; *provided, however*, that the provision of such information may be conditioned upon the Acquirer's or Proposed Acquirer's written confirmation that it will (i) treat the information as confidential and, (ii) use the information solely in connection with considering whether to provide, or providing to Divestiture Product Core Employees the opportunity to enter into employment contracts during a Divestiture Product Core Employee Access Period, and (iii) restrict access to the information to such of the Acquirer's or Proposed Acquirer's employees who need such access in connection with the specified and permitted use;
 3. during the Divestiture Product Core Employee Access Period(s), not interfere with the hiring or employing by that Acquirer or its Manufacturing Designee of the Divestiture Product Core Employees related to the Divestiture Products and assets acquired by that Acquirer, and remove any impediments within the control of a Respondent that may deter these employees from accepting employment with that Acquirer or its Manufacturing Designee, including, but not limited to, any noncompete or nondisclosure provision of employment with respect to a Divestiture Product or other

provided, however, that, subject to the conditions of continued employment prescribed in this Order, this Paragraph shall not prohibit a Respondent from continuing to employ any Divestiture Product Core Employee under the terms of that employee's employment with a Respondent prior to the date of the written offer of employment from the Acquirer or its Manufacturing Designee to that employee;

4. until the Closing Date, provide all Divestiture Product Core Employees with reasonable financial incentives to continue in their position

Businesses;

3. maintain and manage inventory levels of the Divestiture Products in consideration of the marketing and distribution transition to the Acquirer;
4. continue to market, distribute, and sell the Divestiture Products;
5. allow the Acquirer access at reasonable business hours to all Confidential Business Information related to the Divestiture Products and employees who possess or are able to locate such information for the purposes of identifying the books, records, and files directly related to the Divestiture Products that contain such Confidential Business Information pending the completed delivery of such Confidential Business Information to the Acquirer;
6. to the extent known or available to the specified Respondent, provide the Acquirer with

3. ensure that Confidential Business Information related exclusively to the Divestiture Products is not disseminated among the employees associated with Respondents' Retained Business(es) who are directly related to the Business of Respondents' Products identified in the Commission's Complaint as competing Products and institute procedures and requirements to ensure that the above-described employees:
 - a. do not provide, disclose or otherwise make available, directly or indirectly, any Confidential Business Information in contravention of this Order to Maintain Assets; and
 - b. do not solicit, access or use any Confidential Business Information that they are prohibited from receiving for any reason or purpose.

G. Respondents shall give the above-described notification by e-mail with return receipt requested on or before the date specified in the Order to Maintain Assets. Not later than thirty (30) days from the earlier of (i) the Closing Date or (ii) the date this Order to Maintain Assets is issued by the Commission, Respondents shall provide written notification of the restrictions on the use and disclosure of the Confidential Business Information related to the Divestiture Products by that Respondent's personnel to all of its employees who (i) may be in possession of such Confidential Business Information or (ii) may have access to such Confidential Business Information.

H. Respondents shall give the above-described notification by e-mail with return receipt requested on or before the date specified in the Order to Maintain Assets.

III.

IT IS FURTHER ORDERED that:

- A. At any time after Respondents sign the Consent Agreement in this matter, the Commission may appoint a monitor (“Monitor”) to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by the Orders and the Remedial Agreements.
- B. The Commission shall select the Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of a proposed Monitor within

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- d. with respect to the Triage Product Facility, the date on which all relocation activities within the Triage Product Facility that are agreed upon between the Acquirer and the Respondent are completed; and
- e. the date of written notification from Commission staff that the Monitor, in consultation with Commission staff, has determined that the Acquirer has abandoned its efforts to manufacture a Divestiture Product that is being monitored by the Monitor;

provided, however, that the Monitor's service shall not extend more than four (4) years after the Order Date *unless* the Commission decides to extend or modify this period as may be necessary or appropriate to accomplish the purposes of the Orders.

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

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concerning progress by each Acquirer or the Acquirer's Manufacturing Designee toward obtaining FDA approval to manufacture each Divestiture Product and obtaining the ability to manufacture each Divestiture Product in commercial quantities, in a manner consistent with cGMP, independently of Respondents.

- I. Respondents may require the Monitor and each of the 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 Monitor from providing any information to the Commission.
- J. The Commission may, among other things, require the Monitor and each of the 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 Monitor's duties.
- K. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor in the same manner as provided in this Paragraph.
- L. The Commission may on its own initiative, or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Orders.
- M. The Monitor appointed pursuant to this Order to Maintain Assets may be the same person appointed as the Monitor pursuant to the Decision and Order.
- N. The Monitor appointed pursuant to this Order to Maintain Assets may be the same person appointed as a Divestiture Trustee pursuant to the relevant provisions of the Decision and Order.

IV.

IT IS FURTHER ORDERED that within thirty (30) days after the date this Order to Maintain Assets is issued by the Commission, and every sixty (60) days thereafter until Respondents have fully complied with this Order to Maintain Assets, 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 the Orders. Respondents shall submit at the same time a copy of its report concernisu, uste r,(rm)10e-1(oncy2(e)-1(d,)0.002 T)]TJ 5.225 0 Tc

- B. a detailed description of the timing for the completion of such obligations.

provided, however, that, after the Decision and Order in this matter becomes final and effective, the reports due under this Order to Maintain Assets may be consolidated with, and submitted to the Commission on the same timing as, the reports of compliance required to be submitted by Respondents pursuant to the Decision and Order.

V.

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

- A. any proposed dissolution of a Respondent;
- B. any proposed acquisition, merger, or consolidation of a Respondent; or
- C. any other change in a Respondent including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Orders.

VI.

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 any Respondent made to its principal United States offices,

