

\_\_\_\_\_ )

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by Respondent Abbott Laboratories (“Abbott”) of one hundred percent (100%) of the voting s1o[b 3ti0gf thti0[b 3potin(g)2de vgb4(l( v)r( v)2l(g)2c)0.9(.).2.(b4(l( v)r( 0.9(3)-4 v

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 Abbott Laboratories. ~~From 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 Alere Inc. ~~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.

E. “Decision and Order” means the:

1. Proposed Decision and Order contained in the Consent Agreement in this matter until



- C. Until Respondents fully transfer and deliver each of the respective Divestiture Product Assets to an Acquirer, Respondents shall maintain a workforce that is (i) at least as large in size (as measured in full time equivalents), and (ii) comparable in training, and expertise, to that has been associated with the Divestiture Products for the relevant Divestiture Product 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 contracts with a Respondent that would affect the ability or incentive of those individuals to be employed by that Acquirer or its Manufacturing Designee. In addition, for a period of one (1) month following the receipt of a written offer of employment from an Acquirer or its Manufacturing Designee, a Respondent shall not make any counteroffer to any Divestiture Product Core Employee who has received a written offer of employment from that Acquirer or its Manufacturing Designee;

*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 positions and to research, Develop, manufacture, and/or market the Divestiture Product(s) consistent with past practices and/or as may be necessary to preserve the marketability, viability and competitiveness of the Divestiture Product(s) and to ensure successful execution of the pre-Acquisition plans for that Divestiture Product(s) Such incentives shall include a continuation of all employee compensation and benefits offered by a Respondent until the Closing Date(s) for the divestiture of the assets related to the Divestiture Product has occurred, including regularly scheduled raises, bonuses, and vesting of pension (if permitted by Law);

*provided, however,* that this Paragraph does not require nor shall be construed to require a Respondent to terminate the employment of any employee or to prevent a Respondent from continuing to employ the Divestiture Product Core Employees in connection with the Acquisition; and

5. for a period of one (1) year after the Closing Date, not hire any individual that is employed by an Acquirer immediately following the Closing Date to whom an offer of employment was made pursuant to a Remedial Agreement (Divestiture Product Employee);

*provided, however,* a Respondent may hire any Divestiture Product Employee whose employment has been terminated by the relevant Acquirer or with the agreement of the relevant Acquirer with respect to that Divestiture Product Employee.

- E. During the Transition Period with respect to each Divestiture Product that is marketed or sold in the United States before the Closing Date for that Divestiture Product, Respondents, in consultation with the relevant Acquirer, for the purposes of ensuring an orderly marketing and distribution transition



3.





- 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;
- 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 services 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

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 this report concerning compliance with the Orders to the Monitor, if any Monitor has been appointed. Respondents shall include reports, among other things that are required from time to time, a detailed description of efforts to comply with the relevant paragraphs of the Orders, including:

- A. a detailed description of all substantive contacts, negotiations, or recommendations related to (i) the divestiture and transfer of all relevant assets and rights, (ii) transitional services being provided by the relevant Respondent to the relevant Acquirer and (iii) relocation activities within the Triage Product Facility;

- 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 ~~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, registered office of its United States subsidiary, its headquarters address, ~~the~~ Respondents shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. access, during business office hours of that Respondent 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 that Respondent related to compliance with this Order, which ~~copies~~ shall be ~~provided~~ by that Respondent at the request of the authorized representative(s) of the Commission and at the expense of that Respondent; and
- B. to interview officers, directors, or employees of that Respondent, who may have counsel present, regarding such ~~matters~~.

VII.

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate on the later of: