UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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

In the Matter of **Otto Bock HealthCare North America, Inc.,** **a corporation.**	**Docket No. 9378** **PUBLIC**

AMENDED ANSWER AND AFFIRMATIVE DEFENSES OF
RESPONDENT OTTO BOCK HEALTHCARE NORTH AMERICA, INC.

Pursuant to 16 C.F.R. § 3.12, Respondent Otto Bock HealthCare North America, Inc. ("Ottobock"), by and through its undersigned counsel, answers the Federal Trade Commission's ("FTC" or "Commission") December 20, 2017 Complaint as follows:

GENERAL RESPONSE TO THE FTC'S ALLEGATIONS

Ottobock has delivered cutting edge prosthetics to amputees in the United States for nearly sixty years. Otto Bock HealthCare GmbH was founded in 1919 and has a long history of improving quality of life and providing socio-economic benefits to amputees. Ottobock's acquisition of FIH Group Holdings, LLC ("Freedom Innovations" or "Freedom") in September 2017 (the "Merger") greatly enhances competition and will further improve quality of life for amputees. Because of the Merger, Ottobock will be able to offer more and better options to amputees. The Merger is procompetitive and lawful. The FTC's request to unwind the Merger should be denied.

The Complaint fundamentally misunderstands the unique aspects of the orthotic and prosthetic ("O&P") industry. Prosthetic components are a fraction of the $4.3 billion O&P industry. Knee joints are just one component of a lower-limb transfemoral (above-the-knee) prosthesis. There were approximately 32,000 knee joints sold in 2016. Medicare establishes and

utilizes a coding system based on the functionality of individual O&P components to regulate the coverage criteria and reimbursement rates assigned to those individual O&P components ("L-Codes"). Therefore, Medicare's L-Codes constrain the prices that manufacturers of prosthetic components are able to charge, and private insurers and Medicaid further constrain prices by reimbursing at rates below those set by Medicare. Indeed, from 2010 to 2017, total Medicare net reimbursement rates for lower limb prosthetic components increased just 0.4% despite cumulative inflation of 11.4%.

The Complaint ignores current competition between different manufacturers of knee joints and similar components. Dozens of manufacturers sell knee joints in the United States. Prosthetists base their decision on which knee joint to select for an individual amputee on myriad factors including age, height, weight, mobility, occupation, environment, budget, and insurance coverage. Amputees have considerable knee joint options to choose from based on those and other factors. The Complaint also disregards that Freedom Innovations was losing money and cutting research and development investment and efforts. Absent the Merger, Freedom Innovations would likely have exited the marketplace. There are low, if any, barriers to entry into the manufacture of knee joints or expansion of business by the multiple existing manufacturers of knee joints, including several companies that have developed and introduced microprocessor controlled knees in the past few years. This is the vigorously competitive environment in which the merged company seeks to compete.

RESPONSES TO THE FTC'S ALLEGATIONS

Pursuant to the provisions of the Federal Trade Commission Act ("FTC Act"), and by virtue of the authority vested in it by said Act, the Federal Trade Commission ("FTC" or "Commission"), having reason to believe that Respondent Otto Bock HealthCare North America, Inc., ("Respondent Otto Bock") acquired FIH Group Holdings, LLC ("Freedom Innovations" or "Freedom"), in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and it appearing to the Commission that a proceeding by

it in respect thereof would be in the public interest, hereby issues its complaint pursuant to Section 5(b) of the FTC Act, 15 U.S.C. § 45(b), and Section 11(b) of the Clayton Act, 15 U.S.C. § 21(b), stating its charges as follows:

ANSWER: The FTC's unnumbered introductory paragraph is a mere characterization of the complaint and contains only legal conclusions to which no response is necessary. To the extent a response is required, Ottobock denies the allegations of the introductory paragraph.

I.

NATURE OF THE CASE

1. Respondent Otto Bock is the leading manufacturer and supplier of microprocessor prosthetic knees in the United States. On September 22, 2017, Respondent Otto Bock acquired Freedom Innovations, its closest competitor in the market for microprocessor prosthetic knees (the "Merger"). The Merger eliminated direct and substantial competition between Respondent Otto Bock and its most significant and disruptive competitor, further entrenching Respondent Otto Bock's position as the dominant supplier of microprocessor prosthetic knees.

ANSWER: Ottobock admits that it manufactures and supplies microprocessor prosthetic knees in the United States and that it acquired Freedom Innovations on September 22, 2017. This paragraph contains legal conclusions and other non-factual statements to which no response is required. To the extent a response is required, Ottobock denies the remaining allegations in this paragraph.

2. Head-to-head competition between Otto Bock's C-Leg and Freedom's Plié microprocessor prosthetic knees has resulted in substantially lower prices to prosthetic clinics for microprocessor prosthetic knees, and has provided amputees with significant improvements in the microprocessor prosthetic knees they use.

ANSWER: Ottobock admits that competition in the prosthetics industry is robust and that Ottobock's and Freedom Innovations' microprocessor controlled prosthetic knees have provided amputees with significant improvements in prosthetic devices used by amputees. Ottobock denies the remaining allegations in this paragraph.

3. Prosthetic legs are used by individuals who have had a transfemoral, or above-knee, amputation. Amputation is possible in any age group, but the prevalence is highest among

people sixty-five years and older. Approximately 70 percent of above-knee amputations are required due to diseases, like vascular complications or cancer, and 20 percent are due to trauma, as is the case with amputations resulting from combat injuries to soldiers.

ANSWER: Ottobock admits that lower-limb prostheses are used by individuals who have had a transfemoral, or above-knee, amputation; that amputation is possible in any age group; and that some amputations are required due to diseases and to trauma. Ottobock lacks sufficient information to admit or deny whether the allegations concerning amputation causes are accurate, and, on that basis, denies them.

4. Respondent Otto Bock views Freedom as a direct and serious competitive threat. From Otto Bock's perspective, [redacted]

ANSWER: Ottobock admits that it competed with Freedom Innovations prior to the Merger. Ottobock respectfully refers the Commission to the quoted document for a complete and accurate description of its contents. Ottobock denies the remaining allegations in this paragraph.

5. Freedom has provoked a vigorous battle with Respondent Otto Bock to win microprocessor prosthetic knee customers by employing a [redacted] offering various discounting promotions, and regularly launching product upgrades. For example, Freedom launched the Plié 3 in 2014, and according to its CEO the Plié 3 became the [redacted] and gained significant market share. In July 2015, "Otto Bock introduced the C-leg 4 [redacted] and took significant business away from the Plié 3. In response, Freedom quickly launched marketing initiatives specifically [redacted] and successfully won back significant business from Otto Bock.

ANSWER: Ottobock admits that it competed with Freedom Innovations prior to the Merger and that Freedom Innovations launched the Plié 3 in 2014. Ottobock respectfully refers the Commission to the quoted document for a complete and accurate description of its contents. Ottobock denies the remaining allegations in this paragraph.

6. Competition between Respondent Otto Bock and Freedom was poised to increase in the near future. Part of Freedom's competitive response to the success of the C-leg 4 was to

develop a next-generation microprocessor prosthetic knee, named [redacted], which it planned to launch in [redacted]. Freedom's Board of Directors expected that [redacted] would be [redacted] and Freedom's former CEO called [redacted] a [redacted] Customers who have tested [redacted] are enthusiastic about its features and anticipated price point. Freedom planned to pitch [redacted] as a better product, for a lower price, than Otto Bock's C-Leg 4. Freedom expected Otto Bock to quickly complete development of a fifth generation of C-Leg, with which the [redacted] would compete directly.

ANSWER: Ottobock admits that it competed with Freedom Innovations prior to the Merger and that Freedom Innovations was engaged in research and development relating to a new microprocessor controlled knee which it hoped to launch in [redacted]. Ottobock respectfully refers the Commission to the quoted documents for complete and accurate descriptions of their contents. Ottobock denies the remaining allegations in this paragraph.

7. Respondent Otto Bock learned about the [redacted] during its due diligence before the Merger, repeatedly referred to it as a [redacted] to the market-leading C-Leg 4. Otto Bock viewed the Freedom acquisition a [redacted]

ANSWER: Ottobock admits that it learned about the [redacted] project during its due diligence before the Merger. Ottobock further responds that the Complaint's selective quotation of unidentified written material, offered without context, is misleading as framed, and respectfully refers the Commission to the quoted documents, once identified, for a complete and accurate description of their contents. Ottobock denies the remaining allegations in this paragraph.

8. Competition between Respondent Otto Bock and Freedom has provided substantial benefits to amputees in the United States. The two companies have each responded to the other's introduction of new models of microprocessor prosthetic knees with improved features and functions of their own that have increased the safety, health, and quality of life for amputees. The intense competition between Respondent Otto Bock and Freedom also has resulted in significantly lower prices for microprocessor prosthetic knees purchased by prosthetic clinics, which fit amputees with microprocessor prosthetic knees. The savings generated by that competition have allowed prosthetic clinics to offer amputees better care and service. These competitive benefits likely would have increased with the impending launch of the [redacted].

ANSWER: Ottobock admits that prosthetics manufacturers vigorously compete against each other in many ways and that Ottobock's and Freedom Innovations' prosthetics have provided substantial benefits to amputees in the United States. Ottobock lacks sufficient information or knowledge to admit or deny whether the allegations concerning savings by prosthetics clinics and the speculative competitive benefits of Freedom Innovations' [redacted] project are accurate, and, on that basis, denies them. Ottobock denies the remaining allegations in this paragraph.

9. With the Merger, Otto Bock's share of the U.S. market for microprocessor prosthetic knees exceeds [redacted]. The Merger significantly increased concentration in the already highly concentrated market for microprocessor prosthetic knees in the United States, making the Merger presumptively unlawful under the 2010 U.S. Department of Justice and Federal Trade Commission Horizontal Merger Guidelines ("Merger Guidelines").

ANSWER: The allegation that microprocessor prosthetic knees is a relevant market and the allegations about concentrations and legal presumptions are conclusory and are legal conclusions to which no response is required. To the extent a response is required, Ottobock denies the allegations in this paragraph.

10. New entry or expansion by other manufacturers of microprocessor prosthetic knees is not likely to be timely or sufficient to offset the anticompetitive effects of the Merger. It routinely takes firms in excess of two years just to develop a microprocessor prosthetic knee even when they are building on their own existing microprocessor prosthetic knee technology. For example, Freedom spent [redacted] developing its next-generation microprocessor prosthetic knee and was [redacted] from introducing it at the time of the Merger. For potential entrants with no prior experience in the market, developing a competitive microprocessor prosthetic knee likely would take significantly longer.

ANSWER: The allegation that new entry or expansion by other manufacturers of microprocessor prosthetic knees is not likely to be timely or sufficient to offset the anticompetitive effects of the Merger is conclusory and is a legal conclusion to which no response is required. Ottobock admits that Freedom has been developing a new microprocessor

prosthetic knee for [redacted] that is [redacted] from introduction to the marketplace. Ottobock denies the remaining allegations in this paragraph.

11. The Merger will not result in merger-specific efficiencies sufficient to outweigh the competitive harm caused by the Merger.

ANSWER: Ottobock denies the allegations in this paragraph.

II.

BACKGROUND

A.

Jurisdiction

12. Respondent, and each of its relevant operating entities and parent entities are, and at all relevant times have been, engaged in commerce or in activities affecting "commerce" as defined in Section 4 of the FTC Act, 15 U.S.C. § 44, and Section 1 of the Clayton Act, 15 U.S.C. § 12.

ANSWER: Ottobock admits that it is, and at all relevant times has been, engaged in commerce or in activities affecting "commerce" as defined in Section 4 of the FTC Act, 15 U.S.C. § 44, and Section 1 of the Clayton Act, 15 U.S.C. § 12. Ottobock lacks information or knowledge to admit or deny whether the allegations concerning undefined "relevant operating entities and parent entities" are accurate, and, on that basis, denies them.

13. The Merger constitutes an acquisition subject to Section 7 of the Clayton Act, 15 U.S.C. § 18.

ANSWER: Admitted.

B.

Respondent

14. Respondent Otto Bock is a Minnesota corporation, with its U.S. headquarters in Austin, Texas. Otto Bock's parent company, Otto Bock HealthCare GmbH, is headquartered in Duderstadt, Germany. Respondent Otto Bock is a leading global provider of upper and lower limb prosthetics, orthotics, mobility solutions, and medical care. Respondent Otto Bock currently markets the C-Leg 4 microprocessor prosthetic knee, as well as other prosthetic knees, ankles, and feet. The company was founded in 1919, has over 7,000 employees worldwide, and operates in fifty countries.

ANSWER: Ottobock admits that it is a Minnesota corporation, with its U.S. headquarters in Austin, Texas. Ottobock further admits that its parent company, Otto Bock HealthCare GmbH, is headquartered in Duderstadt, Germany. Ottobock also admits that it, or its affiliates, provide upper and lower limb prosthetics, orthotics, mobility solutions, and medical-related services to customers in various countries throughout the world. Ottobock further admits that it markets the C-Leg 4 microprocessor prosthetic knee, as well as other prosthetic knees, ankles, feet, sockets, liners, and other components. Ottobock also admits that its parent organization was founded in 1919 and that its affiliates have over 7,000 employees worldwide and operate in fifty countries. Ottobock denies the remaining allegations in this paragraph.

15. Freedom, now owned by Respondent Otto Bock, was founded in 2002. Prior to the Merger, Freedom had been privately owned and headquartered in Irvine, California, and specialized in the manufacture and sale of lower limb prosthetics. Among the many prosthetic knee, ankle, foot, and related products it sold were the Plié 3 microprocessor prosthetic knee and the Kinnex microprocessor prosthetic foot. Pre-Merger, Freedom designed and manufactured prosthetic products at facilities in California and Utah and employed approximately 150 people. Health Evolution Partners Fund I (AIV I), LP ("Health Evolution Partners"), a private equity firm, was the majority shareholder of Freedom at the time of the Merger.

ANSWER: Ottobock admits that Freedom Innovations was founded in 2002 and is now owned by Ottobock, that it was privately owned and headquartered in Irvine, California prior to the Merger, and that it manufactures and sells lower limb prosthetics, including the Plié 3 microprocessor prosthetic knee and the Kinnex microprocessor prosthetic foot. Ottobock also admits that Freedom Innovations designs and manufactures prosthetic products at facilities in California and Utah and employed approximately 150 people at the time of the Merger. Ottobock further admits that, at the time of the Merger, Health Evolution Partners Fund I (AIV I), LP ("Health Evolution Partners") held the majority of the ownership interests in Freedom Innovations. Ottobock denies the remaining allegations in this paragraph.

C.

The Merger

16. Pursuant to an Agreement and Plan of Merger ("Merger Agreement"), Respondent Otto Bock acquired Freedom from Health Evolution Partners for [redacted] on September 22, 2017. Respondent Otto Bock and Health Evolution Partners simultaneously signed the Merger Agreement and consummated the Merger.

ANSWER: Ottobock admits that on September 22, 2017 it acquired Freedom Innovations for the consideration stated in the Merger Agreement from Health Evolution Partners and other parties, a substantial portion of which was used to pay off indebtedness of Freedom Innovations. The remaining allegations in this paragraph describe the Merger Agreement, a writing that speaks for itself.

III.

THE RELEVANT MARKET

17. The relevant market in which to analyze the effects of the Merger is no broader than the manufacture and sale of microprocessor prosthetic knees to prosthetic clinics in the United States.

ANSWER: Ottobock denies the allegations in this paragraph.

A.

Relevant Product Market

18. Prosthetists fit amputees with two general types of prosthetic knees: prosthetic knees with microprocessors, and prosthetic knees that do not have microprocessors. Microprocessor prosthetic knees sense variations in walking rhythm and ground conditions and make thousands of adjustments per second to the stiffness and positioning of the joint using complex algorithms to create a stable platform for amputees. "Mechanical knees," or "non-microprocessor knees," do not have microprocessors and thus do not make such adjustments.

ANSWER: Ottobock admits that transfemoral amputees have several mobility options, including wheelchairs and prostheses that include a socket, knee joint, ankle joint, and foot components. Ottobock also admits that, for transfemoral amputees that are prescribed a prosthesis, prosthetists fit those transfemoral amputees with a combination of components that

may include a socket, knee joint, ankle joint, and foot components that best fit the respective transfemoral amputee's life situation and activity goals. Ottobock further admits that microprocessor controlled knee joints have sensors, a microprocessor, software, a resistance system, and a battery. Ottobock also admits that mechanical knee joints create a stable platform for amputees through adjustments that are controlled by friction using either a hydraulic system or a locking mechanism and that most mechanical knee joints do not have microprocessors. Ottobock denies the remaining allegations in this paragraph.

19. The most significant difference between microprocessor and mechanical prosthetic knees is that, for certain types of amputees, microprocessor prosthetic knees reduce the likelihood of falls that can occur if the knee is in the wrong position. Because they do not sense and adjust, mechanical prosthetic knees are less responsive than microprocessor prosthetic knees to sudden movements, and, hence, lead to a greater risk of falling. Microprocessor prosthetic knees also have other benefits, such as reducing pain in other parts of the body and promoting the health and function of the sound limb. The health, safety, and comfort advantages of microprocessor prosthetic knees over mechanical prosthetic knees have been demonstrated in numerous clinical studies.

ANSWER: Ottobock admits that prosthetists fit transfemoral amputees with a socket, knee joint, ankle joint, and foot components that best fit the respective transfemoral amputee's life situation and activity goals. Ottobock further admits that myriad factors affect prosthetic component choice, including age, height, weight, occupation, environment, wound status, comfort, mobility level, budget, and insurance coverage, among many other factors, and that all of those factors determine whether a particular patient may benefit more from a mechanical knee, a microprocessor controlled knee, or another solution. Ottobock denies the remaining allegations in this paragraph.

20. Prosthetists and physicians determine whether to prescribe and fit a microprocessor prosthetic knee or a mechanical knee for an amputee based on the amputee's physical condition and expected mobility and the likelihood that insurance will cover the prescribed prosthetic.

ANSWER: Ottobock admits that myriad factors affect prosthetic component choice, including age, height, weight, occupation, environment, wound status, comfort, mobility level, budget, and insurance coverage, among many other factors. Ottobock denies the remaining allegations in this paragraph.

21. The K-Level rating system—developed by Medicare and used throughout the prosthetics industry—classifies amputees into five ascending mobility levels, K-0 to K-4. A K-0 amputee is generally non-ambulatory. K-1 amputees are "household ambulators" who have the ability or potential to walk at a fixed cadence and slow speed and to traverse flat surfaces. K-2 amputees are "limited community ambulators" who can walk at fixed cadences and slow speeds and traverse low-level environmental barriers, like curbs. K-3 amputees are "unrestricted community ambulators" who have the ability or potential to walk with variable cadences and traverse most environmental barriers. K-4 amputees are considered "highly active" ambulators who have the ability or potential to engage in activities requiring high levels of impact or stress, such as running or hiking.

ANSWER: Ottobock admits that the K-Level rating system—developed by Medicare's Centers for Medicare and Medicaid Services ("CMS") and used throughout the prosthetics industry in the United States—classifies amputees into five ascending mobility levels, K-0 to K-4. Ottobock respectfully refers the Commission to the CMS definitions of each K-Level for a more accurate description, and the summary descriptions are accordingly denied as stated.

22. Under the common standards of practice, physicians and prosthetists typically prescribe microprocessor prosthetic knees only for amputees with K-3 and K-4 mobility levels because amputees with this level of activity significantly benefit from the increased safety and stability of microprocessor prosthetic knees.

ANSWER: Ottobock admits that, for transfemoral amputees that are prescribed a lower limb prosthesis, physicians prescribe prosthetic devices based on numerous factors, including K-Level. Ottobock also admits that physicians may prescribe prosthetic devices that include microprocessor prosthetic knee joints for transfemoral amputees with K-1 through K-4 mobility levels, and Medicare typically limits reimbursement for microprocessor prosthetic knees to amputees with, or potential to project to, K-3 and K-4 mobility levels. Ottobock denies the remaining allegations in this paragraph.

23. The L-Code system, created by Medicare and followed by most private insurers, establishes the reimbursement clinics receive for prosthetics, including microprocessor prosthetic knees and mechanical prosthetic knees. The Centers for Medicare & Medicaid Services ("CMS"), as well as most private insurers, generally only provide reimbursement for microprocessor prosthetic knees for K3 and K4 amputees. K2 amputees generally can only receive reimbursement for mechanical knees.

ANSWER: Ottobock admits that the L-Code system was created by Medicare and that it establishes the reimbursement prosthetists receive for prosthetic devices. Ottobock further admits that private insurers and Medicaid reimburse prosthetists at percentages below Medicare's L-Code reimbursement rates. Ottobock also admits that physicians may prescribe prosthetic devices that include microprocessor prosthetic knee joints for transfemoral amputees with K-1 through K-4 mobility levels based on several factors, including age, height, weight, occupation, environment, wound status, comfort, mobility level, budget, and insurance coverage, among many other factors. Ottobock further admits that Medicare typically limits reimbursement for microprocessor prosthetic knees to amputees with, or potential to project to, K-3 and K-4 mobility levels. Ottobock denies the remaining allegations in this paragraph.

24. Respondent Otto Bock, Freedom, and other microprocessor prosthetic knee manufacturers target K3 and K4 amputees to use their microprocessor prosthetic knee products. K2 amputees—who cannot generally be fitted with microprocessor prosthetic knees—are targeted by manufacturers of mechanical knees, which, as the former CEO of Freedom explained, are [redacted]

ANSWER: Ottobock admits that physicians may prescribe prosthetic devices that include microprocessor controlled knee joints or mechanical knee joints for K-2, K-3, and K-4 transfemoral amputees based on several factors, including age, height, weight, occupation, environment, wound status, comfort, mobility level, budget, and insurance coverage, among many other factors. Ottobock also admits that it designed the Kenevo microprocessor-controlled knee joint for Mobis Grade 1 and 2 (similar to K-1 and K-2 levels in the United States) transfemoral amputees. Ottobock further responds that the Complaint's selective quotation of

unidentified material, offered without context, is misleading as framed, and respectfully refers the Commission to the quoted material, once identified, for a complete and accurate description of their contents. Ottobock denies the remaining allegations in this paragraph.

25. Once a prosthetist has determined that a microprocessor prosthetic knee is medically optimal for an amputee, typically with K3 or K4 mobility, the prosthetic clinic submits a claim for reimbursement to the amputee's insurance. Prosthetics with similar characteristics and functions generally have the same L-Codes and reimbursement amounts. Because of their differing features and functionality, the L-Code system distinguishes between microprocessor prosthetic knees and mechanical prosthetic knees. Prosthetic clinics typically receive approximately $25,000 in reimbursement for microprocessor prosthetic knees, whereas clinics generally receive reimbursement of only up to $10,000 for mechanical prosthetic knees.

ANSWER: Ottobock admits that physicians may prescribe prosthetic devices including microprocessor controlled knee joints or mechanical knee joints for K-2, K-3, and K-4 transfemoral amputees based on several factors, including age, height, weight, occupation, environment, wound status, comfort, mobility level, budget, and insurance coverage, among many other factors. Ottobock further admits that reimbursement to prosthetic clinics is constrained by the Medicare L-Code System and that private insurers and Medicaid reimburse prosthetists at percentages below Medicare's L-Code reimbursement rates. Ottobock denies the remaining allegations in this paragraph.

26. Manufacturers, including Respondent Otto Bock and Freedom, compete on both the price and features of their microprocessor prosthetic knees to secure the business of prosthetic clinics. Microprocessor prosthetic knee manufacturers negotiate multi-year contracts with each of their prosthetic clinic customers or distributors, typically offering significant discounts off the list prices for their products to maximize sales. The prices prosthetic clinics pay manufacturers for microprocessor prosthetic knees are substantially below the reimbursement rates the clinics receive from public and private insurers. Clinics use the reimbursement they receive from insurers to cover the cost of purchasing the microprocessor prosthetic knee from the manufacturer, fitting the knee and providing related services, and sustaining the profitability of their businesses, which allow them to compete to attract amputees by providing high-quality care and services.

ANSWER: Ottobock admits that prosthetics manufacturers vigorously compete against each other in many ways and that prosthetics manufacturers negotiate contracts with prosthetic

clinics and distributors. Ottobock lacks sufficient information or knowledge to admit or deny whether the allegations concerning the services offered by prosthetics clinics are accurate, and, on that basis, denies them. Ottobock denies the remaining allegations in this paragraph.

27. Microprocessor prosthetic knee manufacturers, including Respondent Otto Bock and Freedom, regularly offer lower prices to prosthetic clinic customers to compete against other microprocessor prosthetic knee products. Periodically, they also offer discounts, inducements, and other promotions to increase sales. Manufacturers constantly work to improve their products and frequently launch upgraded microprocessor prosthetic knees to make their offerings more attractive than competing products to amputees and their prosthetists.

ANSWER: Ottobock admits that prosthetic component manufacturers vigorously compete against each other in many ways. Ottobock admits that it [redacted] and that it has ongoing R&D efforts on a wide range of O&P products, including microprocessor controlled knees. Ottobock lacks sufficient information or knowledge to admit or deny whether the allegations concerning the prices and promotions offered by other prosthetic component manufacturers, as well as their R&D efforts, are accurate, and, on that basis, denies them.

28. Mechanical knees are not a substitute for microprocessor prosthetic knees for prosthetists seeking to fit certain K3 and K4 amputees with medically appropriate knees because mechanical knees are mechanically and functionally quite different. Mechanical knees provide less responsiveness and stability than microprocessor prosthetic knees for certain amputees, and they are less effective at reducing pain. That microprocessor and mechanical prosthetic knees do not compete is also evidenced by their completely different price points: microprocessor prosthetic knees cost two to three-times more than mechanical knees. Consequently, reimbursement is substantially more for microprocessor prosthetic knees than for mechanical knees.

ANSWER: Ottobock admits that physicians may prescribe prosthetic devices including microprocessor controlled knee joints or mechanical knee joints for transfemoral amputees based on several factors, including age, height, weight, occupation, environment, wound status, comfort, mobility level, budget, and insurance coverage, among many other factors. Ottobock denies the remaining allegations in this paragraph.

29. In negotiations with prosthetic clinic customers, manufacturers of microprocessor prosthetic knees do not respond to changes in prices of mechanical knees or other products—they focus on setting attractive prices relative to other microprocessor prosthetic knees. The many advancements in microprocessor prosthetic knee technology that have occurred in recent years have been driven by responses to innovations by rival microprocessor prosthetic knee competitors, not developments in the mechanical knee market. The rivalry between the microprocessor prosthetic knee businesses of Respondent Otto Bock and Freedom (not competition from other types of products) has resulted in several new microprocessor prosthetic knee advancements and aggressive price competition that has benefitted prosthetists and amputees. Internal analyses of Otto Bock and Freedom demonstrate microprocessor and mechanical prosthetic knees are in separate markets.

ANSWER: Ottobock admits that the prices it sets for the prosthetic components it sells in the United States are constrained by reimbursement rates from Medicare, Medicaid, and private payors and are limited by large distributors and customers. Ottobock further admits that prior to the Merger it competed with Freedom Innovations. The allegation that microprocessor and mechanical prosthetic knees are in separate markets is conclusory and is a legal conclusion to which no response is required. To the extent a response is required, Ottobock denies the allegation. Ottobock denies the remaining allegations in this paragraph.

30. The appropriate product market in which to analyze the effects of the Merger is the one for which a hypothetical monopolist could profitably impose a small but significant and non-transitory increase in price ("SSNIP") on at least one product in the market. A hypothetical monopolist of microprocessor prosthetic knees could profitably impose a SSNIP on prosthetic clinic customers because they would not likely switch to mechanical knees or other products to avoid paying higher prices.

ANSWER: The allegation that microprocessor prosthetic knees is a relevant market is conclusory and is a legal conclusion to which no response is required. To the extent a response is required, Ottobock denies the allegation. Ottobock denies the remaining allegations in this paragraph.

B.

Relevant Geographic Market

31. The United States is the relevant geographic market in which to assess the competitive effects of the Merger.

ANSWER: The allegations in this paragraph contain legal conclusions to which no response is required. To the extent a response is required, Ottobock denies the allegations in this paragraph.

32. Prosthetic manufacturers must have U.S. sales representatives and support capabilities to provide their prosthetic clinic customers assistance with fitting, service, and repair of microprocessor prosthetic knees. Sales representatives also typically visit prosthetists to demonstrate products, provide educational materials, and develop relationships that are important to driving sales of microprocessor prosthetic knee products. Manufacturers must also have an established and strong reputation among U.S. customers for producing high-quality microprocessor prosthetic knees to compete effectively. Because of these considerations, the options of U.S. customers are limited to microprocessor prosthetic knee manufacturers with a U.S. presence and strong reputations in this country.

ANSWER: Ottobock denies the allegations in this paragraph.

33. Otto Bock's internal strategy documents, as well as those of Freedom, refer to a "U.S." market for microprocessor prosthetic knees.

ANSWER: Ottobock admits that there may be documents at Ottobock and at Freedom Innovations that refer to various segments of the orthotics and prosthetics industry, including microprocessor prosthetic knees and different configurations of prosthetic components in the United States and different configurations of geographic marketplaces. The allegation that microprocessor prosthetic knees is a relevant market is conclusory and a legal conclusion to which no response is required. To the extent a response is required, Ottobock denies the allegation. Ottobock denies the remaining allegations in this paragraph.

34. A hypothetical monopolist of all microprocessor prosthetic knees sold in the United States could profitably impose a SSNIP on U.S. prosthetic clinic customers because those customers could not turn to suppliers outside the United States to avoid paying higher prices.

ANSWER: Ottobock denies the allegations in this paragraph.

IV.

MARKET STRUCTURE AND THE MERGER'S PRESUMPTIVE ILLEGALITY

35. Before it acquired Freedom, Respondent Otto Bock was already the dominant manufacturer of microprocessor prosthetic knees for sale in the United States, with a market share of approximately [redacted] percent. Freedom was one of the top three manufacturers of microprocessor prosthetic knees for sale in the United States, with an approximate market share of [redacted] percent. Freedom's Plié 3 was the microprocessor prosthetic knee that competed most closely with Otto Bock's market-leading C-Leg 4. Post-Merger, Otto Bock's share of the microprocessor prosthetic knee market increased to approximately [redacted] percent. Össur Americas, Inc. ("Össur") and Endolite USA ("Endolite") also manufacture microprocessor prosthetic knees for sale in the United States. Össur's approximate market share is [redacted] percent. Endolite's market share is just [redacted] percent. Fringe competitors Nabtesco and DAW each make up less than [redacted] percent of the market.

ANSWER: Ottobock lacks sufficient knowledge or information to admit or deny whether the allegations concerning the sales of manufacturers of prosthetics components are accurate, and, on that basis, denies them. The allegation that microprocessor prosthetic knees for sale in the United States is a relevant market is conclusory and is a legal conclusion to which no response is required. To the extent a response is required, Ottobock denies the allegation. Ottobock denies the remaining allegations in this paragraph.

36. The Merger Guidelines and courts measure concentration using the Herfindahl-Hirschman Index ("HHI"). HHI levels are calculated by totaling the squares of the market shares of each firm in the relevant market. A relevant market is "highly concentrated" if it has an HHI level of 2,500 or more. A merger is presumed likely to create or enhance market power—and is presumptively illegal—when the post-merger HHI exceeds 2,500 and the merger increases the HHI by more than 200 points.

ANSWER: Ottobock admits that the Herfindahl-Hirshman Index ("HHI") is used by the FTC as a measure of market concentration. Ottobock admits that the Horizontal Merger Guidelines issued by the Antitrust Division of the United States Department of Justice and the FTC on August 19, 2010 reference HHI, but otherwise states that the Horizontal Merger Guidelines speak for themselves. Ottobock denies the remaining allegations in this paragraph.

37. Post-Merger market concentration, and the change in concentration caused by the Merger, exceed, by a wide margin, the thresholds established in the Merger Guidelines. Pre-Merger, the market for microprocessor prosthetic knees in the United States was highly concentrated, with an approximate HHI of [redacted]. The Merger increased the HHI of the microprocessor prosthetic knee market in the United States by approximately [redacted]. Post-Merger, the HHI of the microprocessor prosthetic knee market in the United States is [redacted].

ANSWER: Ottobock hereby incorporates its responses to paragraphs 35-36 as if fully set forth herein. The allegation that microprocessor prosthetic knees in the United States is a relevant market and the allegations about concentrations are conclusory and are legal conclusions to which no response is required. To the extent a response is required, Ottobock denies the allegations. Ottobock denies the remaining allegations in this paragraph.

38. The Merger is presumptively unlawful under the Merger Guidelines and relevant case law.

ANSWER: The allegation in this paragraph is conclusory and a legal conclusion to which no response is required. To the extent a response is required, Ottobock denies the allegation.

V.

ANTICOMPETITIVE EFFECTS

39. The Merger eliminated significant and close competition between Respondent Otto Bock and Freedom in the U.S. market for microprocessor prosthetic knees, harming consumers substantially. Prior to the Merger, Respondent Otto Bock and Freedom engaged in vigorous, sustained price and innovation competition to the benefit of prosthetic clinics and amputees.

ANSWER: Ottobock admits that it and Freedom Innovations competed against each other prior to the Merger and that the merged company would be a more robust, innovative, and effective competitor to other manufacturers of prosthetics components to the benefit of prosthetic clinics and amputees. Ottobock denies the remaining allegations in this paragraph.

40. Manufacturers of lower-limb prosthetic components compete to win the business of prosthetic clinic customers. Prosthetists select and purchase microprocessor prosthetic knees and other components from manufacturers and provide them to their amputee

patients. Under Medicare's L-Code system, prosthetic clinics are reimbursed similar amounts for most microprocessor prosthetic knees, regardless of the manufacturer.

ANSWER: Ottobock admits that manufacturers of lower-limb prosthetic components vigorously compete to win the business of prosthetic clinic customers. Ottobock further admits that prosthetists fit transfemoral amputees with prosthetic devices that may include a socket, knee joint, ankle joint, and foot components that best fit the respective transfemoral amputee's life situation and activity goals and that myriad factors affect prosthetic component choice, including age, height, weight, occupation, environment, wound status, comfort, mobility level, budget, and insurance coverage, among many other factors. Ottobock also admits that the Medicare L-Code system constrains the reimbursement rates that prosthetists receive for prosthetics components. Ottobock further admits that private insurers and Medicaid reimburse prosthetists at percentages below Medicare's L-Code reimbursement rates. Ottobock denies the remaining allegations in this paragraph.

41. Competition between manufacturers of microprocessor prosthetic knees to win the business of prosthetic clinics results in cost savings and other benefits. Microprocessor prosthetic knees manufactured by Otto Bock and Freedom are the first and second choices for many prosthetic clinic customers.

ANSWER: Ottobock admits that manufacturers of prosthetics components, including Össur, Endolite, DAW, and Nabtesco, among others, vigorously compete against each other in many ways to win the business of prosthetic clinics. Ottobock lacks sufficient information or knowledge to admit or deny whether the allegations concerning prosthetic clinic savings, benefits, and choices are accurate, and, on that basis, denies them. Ottobock denies the remaining allegations in this paragraph.

42. Manufacturers of microprocessor prosthetic knees compete to win the business of prosthetic clinics by improving their products. Competition between Otto Bock and Freedom has led to advancements in microprocessor prosthetic knees. Freedom and Respondent Otto Bock both have responded to the other's innovations in product features and functionality of their microprocessor prosthetic knees. These innovations have had a

direct impact on the health and welfare of amputees, who rely on these prosthetics for their mobility and quality of life.

ANSWER: Ottobock admits that manufacturers of prosthetic components vigorously compete against each other in many ways, including by improving their products. Ottobock further admits that innovations of prosthetics components have had a direct impact on the health and welfare of amputees, who rely on these prosthetics components for their mobility and quality of life. Ottobock denies the remaining allegations in this paragraph.

43. Otto Bock introduced C-Leg in the United States in 1999. C-Leg was the first microprocessor prosthetic knee on the market. Since its introduction, Otto Bock has been the market leader in terms of sales.

ANSWER: Ottobock admits that it introduced the C-Leg in the United States in 1999. Ottobock denies the remaining allegations in this paragraph.

44. Since it launched the Plié microprocessor prosthetic knee in 2008, Freedom's strategy has been to offer customers a similar, but lower-priced, alternative to Otto Bock's microprocessor prosthetic knees. Freedom introduced the Plié 3, its third-generation microprocessor prosthetic knee, in 2014. For that product, Freedom adopted a [redacted] strategy, setting the average sales price of the Plié 3 lower than Otto Bock's C-Leg 3. Additionally, the Plié 3 offered innovative new features over Otto Bock's (and others') microprocessor prosthetic knees, including water resistance. According to Freedom's CEO, when Freedom launched the Plié 3, it set the industry standard for microprocessor prosthetic knees.

ANSWER: Ottobock admits that Freedom launched the Plié microprocessor prosthetic knee in 2008 and the Plié 3 in 2014. Ottobock respectfully refers the Commission to the quoted documents, once identified, for a complete and accurate description of their contents. Ottobock denies the remaining allegations in this paragraph.

45. When Freedom introduced Plié 3 in 2014, customers shifted purchases from Otto Bock's C-Leg to the Plié because the Plié offered similar or better functions at a discounted price. Competition between Respondent Otto Bock and Freedom has resulted in lower prices for microprocessor prosthetic knees. Prosthetists have been able to increase the amount and quality of the services they offer to their patients using the savings that competition between the Plié and C-Leg have generated.

ANSWER: Ottobock admits that it competes with Freedom and other prosthetics makers, including Össur, Endolite, DAW, Nabtesco, and numerous others. Ottobock lacks sufficient information or knowledge to admit or deny whether the allegations concerning pricing and services offered by prosthetists are accurate, and, on that basis, denies them. Ottobock denies the remaining allegations in this paragraph.

46. In response to the launch of the Plié 3, Otto Bock developed its next-generation microprocessor prosthetic knee—the C-Leg 4—in order to [redacted] When Otto Bock designed the C-Leg 4, it specifically included [redacted] At the same time, Otto Bock engaged in marketing efforts targeted at medical directors of CMS and private insurers, [redacted]

ANSWER: Ottobock admits that it introduced the C-Leg 4 in mid-2015. Ottobock further responds that the Complaint's selective quotation of unidentified written material, offered without context, is misleading as framed, and respectfully refers the Commission to the quoted documents, once identified, for a complete and accurate description of their contents. Ottobock otherwise denies the allegations in this paragraph.

47. When Otto Bock introduced the C-Leg 4 in mid-2015, it had an immediate and significant impact on Freedom's Plié 3 sales. That impact was significant enough that Freedom discussed it with both its Board of Directors and its creditors.

ANSWER: Ottobock admits that it introduced the C-Leg 4 in mid-2015. Ottobock respectfully refers the Commission to the referenced documents, once identified, for a complete and accurate description of their contents. Ottobock denies the remaining allegations in this paragraph.

48. Freedom responded to the introduction of the C-Leg 4 by engaging in increased sales and marketing efforts, offering discounts and promotions, and making quality improvements to the Plié 3. For example, in its marketing materials for the Plié 3, Freedom touted key benefits of the Plié 3 over the C-Leg 4, and analyzed "Ottobock Claims vs Reality." In November 2015, Freedom reported that [redacted]

ANSWER: Ottobock responds that the Complaint's selective quotation of unidentified written material, offered without context, is misleading as framed, and respectfully refers the Commission to the quoted documents, once identified, for a complete and accurate description of their contents. Ottobock otherwise denies the allegations in this paragraph.

49. In the fall of 2015, Freedom also initiated development of a new microprocessor prosthetic knee branded the [redacted] Internally, Freedom's [redacted] According to Freedom documents, the [redacted] In its [redacted] Freedom only compared [redacted] against Otto Bock's C-Leg 4—not the microprocessor prosthetic knees of any other manufacturer.

ANSWER: Ottobock admits that Freedom Innovations is developing a new microprocessor prosthetic knee. Ottobock further responds that the Complaint's selective quotation of unidentified written material, offered without context, is misleading as framed, and respectfully refers the Commission to the quoted documents, once identified, for a complete and accurate description of their contents. Ottobock otherwise denies the allegations in this paragraph.

50. The [redacted] design ultimately included numerous technological advancements over Otto Bock's C-Leg 4: [redacted] Freedom planned to use a [redacted] against Otto Bock's C-Leg, positioning [redacted] in the market as [redacted] and an [redacted] Freedom planned to use the pricing and marketing strategy it had used successfully in its prior Plié launches, expecting to price [redacted] at a [redacted] per unit discount to the C-Leg 4.

ANSWER: Ottobock admits that Freedom Innovations is developing a new microprocessor prosthetic knee. Ottobock respectfully refers the Commission to the referenced documents, once identified, for a complete and accurate description of their contents. Ottobock denies the remaining allegations in this paragraph.

51. While Freedom's engineers worked to develop the [redacted], Respondent Otto Bock and Freedom continued to compete vigorously to secure business from prosthetic clinics for their respective microprocessor prosthetic knees, with sales shifting back and forth as each company made product improvements and offered pricing discounts. For example, when

Freedom decreased its Plié 3 price to a large prosthetic clinic in 2016, Freedom's Plié 3 sales increased and Otto Bock's C-Leg 4 sales decreased.

ANSWER: Ottobock admits that it competed with Freedom prior to the Merger and that it competes with other prosthetics makers, including Össur, Endolite, DAW, Nabtesco, and numerous others. Ottobock denies the remaining allegations in this paragraph.

52. Freedom's enthusiasm about the market potential for the [redacted] grew after it performed initial patient test fittings. In April 2017, after [redacted] test fittings of [redacted], Freedom's Board of Directors noted that [redacted] and that [redacted] and concluded that [redacted]

ANSWER: Ottobock admits that Freedom Innovations is developing a new microprocessor prosthetic knee. Ottobock further responds that the Complaint's selective quotation of unidentified written material, offered without context, is misleading as framed, and respectfully refers the Commission to the quoted documents, once identified, for a complete and accurate description of their contents. Ottobock otherwise denies the allegations in this paragraph.

53. By September 2017, [redacted] were complete. According to Freedom's Vice President of R&D, [redacted] was [redacted] and Freedom had [redacted] was [redacted] Freedom's investment banker remarked that [redacted] was [redacted] and Freedom's CEO said that [redacted] was [redacted] Freedom was on pace to begin manufacturing the product for [redacted] in the [redacted], and launch the product in the [redacted]. Freedom believed that the company was [redacted] a long-term period of increased sales through the introduction of the [redacted] microprocessor prosthetic knee.

ANSWER: Ottobock admits that Freedom Innovations is developing a new microprocessor prosthetic knee. Ottobock further responds that the Complaint's selective quotation of unidentified written material, offered without context, is misleading as framed, and respectfully refers the Commission to the quoted documents, once identified, for a complete and

accurate description of their contents. Ottobock otherwise denies the allegations in this paragraph.

54. By that time, Otto Bock had conducted due diligence on Freedom, and closely analyzed the [redacted] through that process. Otto Bock concluded that, absent an acquisition of Freedom, [redacted] represented a [redacted] because [redacted] Respondent Otto Bock forecast that C-Leg could lose [redacted] to [redacted] unit sales (roughly [redacted] percent of its 2016 U.S. unit sales) to [redacted] within the first year of its launch. While it was evaluating a potential acquisition of Freedom, Respondent Otto Bock also was working on a product that would improve the performance of the C-Leg 4, called the [redacted] which Otto Bock targeted launching in [redacted].

ANSWER: Ottobock admits that it conducted due diligence on Freedom Innovations prior to the Merger and that it targets launching the [redacted] in [redacted]. Ottobock respectfully refers the Commission to the quoted document for a complete and accurate description of its contents. Ottobock otherwise denies the allegations in this paragraph.

55. An Otto Bock due diligence report also recognized the ongoing competitive threat posed by Freedom's Plié, stating that:

- [redacted]
- [redacted]
- [redacted] and
- [redacted]

ANSWER: Ottobock respectfully refers the Commission to the quoted document for a complete and accurate description of its contents. Ottobock otherwise denies the allegations in this paragraph.

56. Ultimately, Otto Bock decided to acquire Freedom, reasoning that the transaction was justified as a [redacted] since it would give it [redacted] With the acquisition, Respondent Otto Bock believed it [redacted]

ANSWER: Ottobock responds that the Complaint's selective quotation of unidentified written material, offered without context, is misleading as framed, and respectfully refers the Commission to the quoted documents, once identified, for a complete and accurate description of their contents. Ottobock otherwise denies the allegations in this paragraph.

57. Respondent Otto Bock's acquisition of Freedom eliminated the competition between them and has already harmed consumers. The harm from the Merger is ongoing. The elimination of an independent Freedom has removed from the market a maverick firm that had competed against Otto Bock (and other suppliers of microprocessor prosthetic knees) by offering low prices and attractive promotions to clinic customers to win sales. Under common ownership, Otto Bock and Freedom sales personnel no longer have an incentive to compete against each other for sales. Every day that passes under the *status quo*, the acquisition deprives prosthetic clinics and amputees of the benefits that competition between Otto Bock and Freedom provided pre-Merger.

ANSWER: Ottobock denies the allegations in this paragraph. Without limitation, Ottobock specifically denies that the Merger has harmed consumers or competition, and to the contrary, it enhances competition, consumer choice, and innovation and will further improve quality of life for amputees. Ottobock further responds that, absent the Merger, Freedom Innovations would have likely exited the marketplace, that there are low, if any, barriers to entry into the manufacture of knee joints or expansion of business by the multiple existing manufacturers of knee joints, including several companies that have developed and introduced microprocessor controlled knees in the past few years, that there are significant synergies in the Merger, and that the Merger preserves and enhances competition, consumer choice, and innovation in a highly competitive marketplace.

58. In addition, Respondent Otto Bock will likely affect ongoing product development programs. Prior to the Merger, Freedom had plans to launch both the Plié 4 and [redacted] microprocessor prosthetic knees [redacted], and Otto Bock planned to launch a fifth generation of its C-Leg product, which would have significantly benefitted customers. Under common ownership and without the incentive to introduce innovations to take and defend sales from each other, Respondent Otto Bock does not have the same incentive to launch these products on the same timeline or in the same form as Otto Bock and Freedom had independently pre-Merger. The [redacted] would likely cannibalize each other's business, as well as sales of the Plié 3 and C-Leg 4. Delays or alterations to

these programs may permanently affect the timing and impact of the launch of each product, even if the Court ultimately unwinds the Merger.

ANSWER: Ottobock denies the allegations in this paragraph. Without limitation, Ottobock specifically denies that the Merger has harmed consumers or competition, and to the contrary, it enhances competition, consumer choice, and innovation and will further improve quality of life for amputees. Ottobock further responds that, absent the Merger, Freedom Innovations would have likely exited the marketplace, that there are low, if any, barriers to entry into the manufacture of knee joints or expansion of business by the multiple existing manufacturers of knee joints, including several companies that have developed and introduced microprocessor controlled knees in the past few years, that there are significant synergies in the Merger, and that the Merger preserves and enhances competition, consumer choice, and innovation in a highly competitive marketplace.

VI.

BARRIERS TO ENTRY AND EXPANSION

59. New entry or expansion by existing firms would not be timely, likely, or sufficient to offset the anticompetitive effects of the Merger.

ANSWER: Ottobock denies the allegations in this paragraph.

60. Potential entrants in the U.S. market for microprocessor prosthetic knees face significant barriers, including those related to intellectual property, designing and developing a competitive product with the strong reputation required to succeed in the market, and constructing a nationwide network of knowledgeable sales and service representatives to generate and maintain business. Additionally, microprocessor knee manufacturers typically offer a broad portfolio of lower-limb prosthetics, including feet, to compete effectively, and support these products with related research and development and marketing and sales.

ANSWER: Ottobock denies the allegations in this paragraph.

61. The process of developing and launching a microprocessor prosthetic knee is expensive and takes at least several years for existing manufacturers, and longer for those without prior experience. Freedom's timeline for the [redacted] project shows that design and

development takes approximately three years. It has similarly taken other manufacturers three years or longer to design and develop microprocessor prosthetic knees.

ANSWER: Ottobock admits that Freedom Innovations has been developing a new microprocessor prosthetic knee for the past [redacted]. Ottobock lacks sufficient information or knowledge to admit or deny whether the allegation concerning other research and development projects of other manufacturers is accurate, and, on that basis, denies it. Ottobock denies the remaining allegations in this paragraph.

VII.

EFFICIENCIES

62. Respondent Otto Bock cannot show that merger-specific efficiencies would result from the Merger that will offset the anticompetitive effects. Freedom's CEO admitted that, prior to the Merger, he had discussed possible synergies of the Merger with Respondent Otto Bock and that Otto Bock concluded that [redacted] Respondent Otto Bock admits that the only cost savings it expects to achieve come from the consolidation of general and administrative functions. These cost savings are not merger-specific.

ANSWER: Ottobock denies the allegations in this paragraph.

VIII.

FAILING FIRM

63. A failing firm defense does not immunize the Merger. Health Evolution Partners did not make good-faith efforts to elicit offers for Freedom or its assets from numerous prosthetic product manufacturers. Health Evolution Partners rejected a reasonable alternative offer, substantially exceeding liquidation value, for Freedom. Furthermore, Freedom was [redacted] on a positive financial trajectory with a promising outlook.

ANSWER: Ottobock denies the allegations in this paragraph.

IX.

VIOLATIONS

COUNT I—ILLEGAL AGREEMENT

64. The allegations of Paragraphs 1 through 63 above are incorporated by reference as though fully set forth.

ANSWER: Ottobock repeats its responses to the allegations contained in Paragraphs 1-63 and realleges them as if fully set out here.

65. The Merger Agreement constitutes an unfair method of competition in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

ANSWER: The allegation that the Merger constitutes an unfair method of competition in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45 is conclusory and a legal conclusion to which no response is required. To the extent a response is required, Ottobock denies the allegation in this paragraph.

COUNT II—ILLEGAL ACQUISITION

66. The allegations of Paragraphs 1 through 63 above are incorporated by reference as though fully set forth.

ANSWER: Ottobock repeats its responses to the allegations contained in Paragraphs 1-65 and realleges them as if fully set out here.

67. The Merger may substantially lessen competition in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and is an unfair method of competition in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

ANSWER: The allegations that the Merger may substantially lessen competition in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and is an unfair method of competition in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45 are conclusory and legal conclusions to which no response is required. To the extent a response is required, Ottobock denies the allegations in this paragraph.

NOTICE AND NOTICE OF CONTEMPLATED RELIEF

This section does not contain any factual averments; therefore it does not require any response, except that Ottobock denies that any of the relief set forth in the Complaint's Notice of Contemplated Relief, or the subparts thereto, is justified by fact, law, or equity.

AFFIRMATIVE DEFENSES

The inclusion of any ground within this section does not constitute an admission that Ottobock bears the burden of proof on each or any of the matters, nor does it excuse the FTC from establishing each element of its purported claim for relief.

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

The Complaint fails to comply with the requirements of Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. § 45(b) because the contemplated relief would not be in the public interest.

THIRD AFFIRMATIVE DEFENSE

Efficiencies and other procompetitive benefits resulting from the acquisition outweigh any and all proffered anticompetitive effects.

FOURTH AFFIRMATIVE DEFENSE

The Complaint fails to allege a proper relevant market in which to assess competitive effects of the Merger.

FIFTH AFFIRMATIVE DEFENSE

Any presumption of anticompetitive effects is rebutted by numerous factors, including, without limitation, the lack of substantial barriers to entry or expansion, the existence of numerous competing manufacturers each with its own research and development programs, the severe price constraints imposed by CMS and private insurers with superior bargaining power, the economic incentive and ability of large distributors and customers to promote products of Ottobock's competitors and new entrants, the severely diminished competitive profile of Freedom Innovations in light of the financial difficulties it faced, and any anticompetitive effects

are outweighed by procompetitive effects, efficiencies and synergies, including without limitation, cost savings, quality improvements, expanded consumer choice, and innovation.

SIXTH AFFIRMATIVE DEFENSE

At the time of the acquisition, Freedom Innovations was a failing firm. Freedom Innovations faced the imminent prospect of business failure, and it could not have been restructured as a going concern under Chapter 11. The sale to Ottobock was the only means to prevent Freedom Innovations' failing assets from exiting the marketplace. [redacted] On information and belief, no other bid would have resulted in a sale that would have put Freedom Innovations in a position that would have increased competition substantially more than the challenged acquisition in any meaningful sense, in any relevant market, or would have resulted in any lower prices or better service than would be achieved by the challenged acquisition. Indeed, the challenged acquisition would lead to greater competition between Ottobock, Össur, Endolite, DAW, Nabtesco, and the numerous other makers of lower limb prosthetics than any of the hypothetical acquisitions that the FTC claims might have occurred.

SEVENTH AFFIRMATIVE DEFENSE

[redacted]

EIGHTH AFFIRMATIVE DEFENSE

Ottobock reserves the right to assert any other defenses as they become known to Ottobock.

WHEREFORE, Ottobock respectfully requests that the Commission:

i. deny the FTC's contemplated relief;

ii. dismiss the Complaint in its entirety with prejudice;

iii. award Ottobock its costs of suit, including attorneys' fees; and

iv. award such other and further relief as the Commission may deem just and proper.

Dated: February 15, 2018

Respectfully submitted,

/s/ Sean P. McConnell

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PUBLIC VERSION

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 15, 2018, I caused a true and correct copy of the foregoing Amended Answer to Complaint to be served via the FTC E-Filing System and e-mail upon the following:

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/s/ Sean P. McConnell
Sean P. McConnell

Notice of Electronic Service

I hereby certify that on February 15, 2018, I filed an electronic copy of the foregoing Respondent's Amended Answer and Affirmative Defenses, with:

D. Michael Chappell
Chief Administrative Law Judge
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Washington, DC, 20580

Donald Clark
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I hereby certify that on February 15, 2018, I served via E-Service an electronic copy of the foregoing Respondent's Amended Answer and Affirmative Defenses, upon:

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