

## Complaint

## IN THE MATTER OF

**McCORMICK & COMPANY, INCORPORATED**

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS  
OF SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE FEDERAL  
TRADE COMMISSION ACT

*Docket C-4225; File No. 081 0045*

*Complaint, July 29, 2008 – Decision, September 12, 2008*

This consent order addresses the proposed acquisition by McCormick & Company of Lawry's and Adolph's brands of seasoning products from Unilever N.V., which would lessen competition in the market for branded seasoned salt in the United States. Under the terms of the order, McCormick is required to divest its entire Season-All (seasoned salt spice blends) business to Morton International, Inc., or another Commission-approved buyer. The order enables the Commission to appoint a trustee to divest any assets identified in the order that respondent has not divested to satisfy the requirements of the order. In addition, the order enables the Commission to seek civil penalties against respondent for noncompliance. The order further requires McCormick to maintain the viability of the assets identified for divestiture. Among other requirements related to maintaining operations of the assets, the order requires McCormick to (1) maintain the viability, competitiveness, and marketability of the assets to be divested; (2) not cause the wasting or deterioration of the assets to be divested; (3) not sell, transfer, encumber, or otherwise impair the assets' marketability or viability; (4) maintain the assets consistent with past practices; (5) use best efforts to preserve the assets' existing relationships with suppliers, customers, and employees; and (6) keep and maintain the assets at inventory levels consistent with past practices. The order prohibits McCormick, for 10 years, from acquiring, without providing the Commission with prior notice, any other seasoned salt product, or any interest in any other spice blends business. The order does not restrict McCormick from expanding its line of spices. Finally, McCormick is required to file periodic compliance reports with the Commission.

*Participants*

For the *Commission*: *Joseph Eckhaus, Jill M. Frumin, Joan Heim, Jeanne Liu, Elizabeth Piotrowski, Amy Posner, Divya Rao, Matthew Reilly, Samuel I. Sheinberg, and W. Stephen Sockwell.*

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For the *Respondent*: *Philip Larson and Janet McDavid, Hogan & Hartson LLP*; and *Janusz Ordover, New York University*.

**COMPLAINT**

Pursuant to the provisions of the Clayton Act and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission (“Commission”), having reason to believe that Respondent McCormick & Company, Incorporated (“McCormick”), a corporation subject to the jurisdiction of the Commission, has agreed to acquire the Lawry’s and Adolph’s brands from Conopco, Inc., an affiliate of Unilever N.V., in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

**I. THE PARTIES****A. Respondent McCormick**

1. Respondent McCormick is a corporation organized, existing, and doing business under and by virtue the laws of the state of Maryland, with its office and principal place of business located at 18 Loveton Circle, Sparks, Maryland 21152-6000.

2. Respondent McCormick is, and at all times relevant herein has been, among other things, engaged in the manufacture, marketing, sales, and distribution of branded and private label spices, seasonings, and flavors to grocery retailers and the food industry internationally and throughout the United States. In 2006, Respondent McCormick had total worldwide net sales of all products of approximately \$2.7 billion. McCormick sells seasoned

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salt in the United States under the McCormick Season-All brand name.

3. Respondent McCormick is, and at all times herein has been, engaged in commerce, as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. §12, and is a corporation whose business is in or affects commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

**B. Unilever**

4. Unilever N.V., a corporation organized under the laws of the Netherlands with its principal place of business located at Weena 455, 3013 AL Rotterdam, Netherlands, is a manufacturer of leading brands in the food, home care, and personal care industry. In 2006, Unilever N.V. had total worldwide sales of over \$49 billion.

5. Unilever United States, Inc., a subsidiary of Unilever N.V., is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Delaware, with its principal place of business at 700 Sylvan Avenue, Englewood Cliffs, New Jersey 07632-3113. Conopco, Inc., doing business as Unilever (“Unilever”), a wholly-owned subsidiary of Unilever United States, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the state of New York, with its principal place of business as 700 Sylvan Avenue, Englewood Cliffs, New Jersey 07632-3113. Unilever is, and at all times relevant herein has been, among other things, engaged in the manufacture, marketing, sales, and distribution of Unilever’s spices, seasonings, and flavors to grocery retailers and the food industry throughout the United States under the Lawry’s and Adolph’s brands. Unilever sells seasoned salt in the United States under the Lawry’s Seasoned Salt brand name. In 2006, Lawry’s and Adolph’s had annual sales of approximately \$150 million, primarily in the United States and Canada.

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6. Unilever is, and at all times herein has been, through Unilever United States, Inc., engaged in commerce, as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. §12, and is a corporation whose business is in or affects commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

**II. THE PROPOSED ACQUISITION**

7. Pursuant to an Agreement and Plan of Merger dated November 13, 2007 (the “Agreement”), McCormick proposes to acquire Unilever’s Lawry’s and Adolph’s spice blends and other products for approximately \$605 million (the “Acquisition”).

**III. THE RELEVANT MARKETS**

8. The relevant line of commerce in which to analyze the effects of the acquisition is the manufacture and sale of branded seasoned salt products. Branded seasoned salt products include any dry branded product or product formulation (not including private or store label) sold at retail, usually in glass or plastic bottles, that consist primarily of salt, contain at least two other different herbs, spices, and/or other seasonings, and are labeled or otherwise described on the container as seasoned salt. Seasoned salt is one of the most popular spice blends products.

9. The United States is the relevant geographic area in which to analyze the effects of the Acquisition in the relevant line of commerce.

**IV. CONCENTRATION**

10. The relevant market for the manufacture and sale of branded seasoned salt products in the United States is highly concentrated as measured by the Herfindahl-Hirschman Index (“HHI”). Lawry’s dominates the market for branded seasoned salt products and McCormick is its most significant competitor.

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Together, they account for over almost 80% of the sales in this highly concentrated market. The proposed acquisition would entrench McCormick as the dominant supplier of branded seasoned salt products in the United States and increase concentration significantly.

## **V. CONDITIONS OF ENTRY**

11. Entry into the relevant line of commerce would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects of the Acquisition set forth in Paragraph 12 below. Entry into the branded seasoned salt products market would require the investment of high sunk costs to establish a brand name and provide promotional funding and advertising to support the product, which would be difficult to justify given the market structure and sales opportunities. Even if a new entrant were willing to take on such investments, it would also face the difficult task of convincing retailers to carry its products. As a result, new entry into any of these markets sufficient to achieve a significant market impact within two years is unlikely.

## **VI. EFFECTS OF THE ACQUISITION**

12. McCormick and Unilever compete in the manufacture and sale of branded seasoned salt products in the United States. The effect of the proposed acquisition, if consummated, may be to substantially lessen competition and tend to create a monopoly in the manufacture and sale of branded seasoned salt products in the United States in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and Section 7 of the Clayton Act, 15 U.S.C. § 18, in the following ways, among others:

- (a) by eliminating direct competition in the manufacture and sale of branded seasoned salt products between McCormick and Unilever;

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(b) by eliminating Unilever as an important competitive constraint in the relevant market and increasing the ability of McCormick to raise prices of branded seasoned salt products unilaterally in the United States; and

(c) by reducing McCormick's incentives to improve service or product quality for branded seasoned salt products in the United States.

**VII. VIOLATIONS CHARGED**

13. The Agreement entered into between Respondent McCormick and Unilever, pursuant to which Respondent McCormick proposes to acquire Unilever's branded seasoned salt business, as described in Paragraph 8, constitutes a violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45.

14. The Acquisition described in Paragraph 8, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

**WHEREFORE, THE PREMISES CONSIDERED,** the Federal Trade Commission on this twenty-ninth day of July, 2008, issues its Complaint against said Respondent.

By the Commission.

## Order to Maintain Assets

**ORDER TO MAINTAIN ASSETS**

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by McCormick & Company, Incorporated (“McCormick”), hereinafter “Respondent,” of the Lawry’s and Adolph’s brands from Conopco, Inc., an indirect subsidiary of Unilever N.V. (“Unilever”), and Respondent having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

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

The Commission having thereafter considered the matter and having determined to accept the executed Consent Agreement and to place such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings and issues this Order to Maintain Assets:

1. Respondent McCormick is a corporation organized, existing and doing business under and by virtue of the laws of the

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state of Maryland, with its office and principal place of business located at 18 Loveton Circle, Sparks, MD 21152-6000.

2. The Commission has jurisdiction of the subject matter of this proceeding and of Respondent, 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, the Decision and Order), which are incorporated herein by reference and made a part hereof, shall apply:

- A. “Decision and Order” means the:
  - 1. Proposed Decision and Order contained in the Consent Agreement in this matter until the issuance and service of a final Decision and Order by the Commission; and
  - 2. Final Decision and Order issued by the Commission following the issuance and service of a final Decision and Order by the Commission.
- B. “Interim Monitor” means any monitor appointed pursuant to Paragraph III of this Order to Maintain Assets.
- C. “Orders” means the Decision and Order and this Order to Maintain Assets.

**II.**

**IT IS FURTHER ORDERED** that from the date this Order to Maintain Assets becomes final:



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- A. Until the Closing Date for the divestiture of the Season-All Assets, Respondent shall take such actions as are necessary to maintain the full economic viability, marketability and competitiveness of the Season-All Assets, to minimize any risk of loss of competitive potential for the Season-All Business associated with the Season-All Assets, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Season-All Assets except for ordinary wear and tear; *provided, however,* that nothing herein shall relieve Respondent of its obligation to comply fully with the terms and provisions of any Season-All Transitional Agreements. Respondent shall not sell, transfer, encumber or otherwise impair the full economic viability, marketability or competitiveness of the Season-All Assets.
- B. Until the Closing Date for the divestiture of the Season-All Assets, Respondent shall maintain the operations of the Season-All Assets in the regular and ordinary course of business and in accordance with past practice (including regular repair and maintenance) and/or as may be necessary to preserve the marketability, viability, and competitiveness of the Season-All Assets, and shall use its best efforts to preserve the existing relationships with customers, employees, suppliers, vendors, distributors, and others having business relations with the Season-All Assets. Respondent's responsibilities shall include, as applicable, but are not limited to, the following:
1. providing the Season-All Brand Products with sufficient working capital to ensure the Season-All Business continues to operate at least at current rates of operation, to meet all capital calls with respect to the Season-All Brand Products and to carry on, at least at their scheduled pace, all supply chain, manufacturing, sales and merchandising support, customer service and support, promotional activities

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- and other business plans for the Season-All Brand Products;
2. continuing, at least at their scheduled pace, any additional expenditures for the Season-All Assets authorized prior to the date the Consent Agreement was signed by Respondent including, but not limited to, all research, development, sales and marketing expenditures;
  3. providing such resources as may be necessary to respond to competition against the Season-All Brand Products and/or to prevent any diminution in retail sales of the Season-All Brand Products during and after the Acquisition and prior to the Closing Date;
  4. providing such resources as may be necessary to maintain the competitive strength and positioning of the Season-All Brand Products associated with the Season-All Assets at all customer accounts;
  5. making available funds sufficient to perform all routine and other maintenance as may be necessary to, and all replacements of, the Season-All Assets;
  6. providing the Season-All Assets with such funds as are necessary to maintain the full economic viability, marketability and competitiveness of the Season-All Assets; and
  7. providing such support services to the Season-All Brand Products as were being provided to the Season-All Business by Respondent as of the date the Consent Agreement was signed by Respondent.
- C. Until the Closing Date for the divestiture of the Season-All Assets, Respondent shall maintain a work force at least as equivalent in size, training, and expertise to what has been associated with the Season-All Brand Products pursuant to the most recent pre-Acquisition marketing plans.

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- D. Until the Closing Date for the divestiture of the Season-All Assets, Respondent shall provide all Season-All Brand Products Key Employees with reasonable financial incentives to continue in their positions and to market and promote the Season-All Brand Products consistent with past practices and/or as may be necessary to preserve the marketability, viability and competitiveness of the Season-All Assets and to promote successful execution of the pre-Acquisition marketing plans related to the Season-All Brand Products. Such incentives shall include a continuation of all employee compensation and benefits offered by Respondent until the Closing Date has occurred, including regularly scheduled raises, bonuses, and vesting of pension benefits (as permitted by law), and additional incentives as may be necessary to prevent any diminution of the competitiveness of the relevant Season-All Brand Products.
- E. During the Employee Access Period, Respondent shall not interfere with the hiring or employing by the Commission-approved Acquirer of the Season-All Brand Products Key Employees, and shall remove any impediments within the control of Respondent that may deter these employees from accepting employment with the Commission-approved Acquirer, including, but not limited to, any noncompete provisions of employment or other contracts with Respondent that would affect the ability or incentive of those individuals to be employed by the Commission-approved Acquirer. In addition, Respondent shall not make any counteroffer to a Season-All Brand Products Key Employee who receives a written offer of employment from the Commission-approved Acquirer;

*provided, however,* that this Paragraph E. shall not prohibit the Respondent from making offers of employment to or employing any Season-All Brand Products Key Employee during the Employee Access Period if the Commission-approved Acquirer has notified the Respondent in writing

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that the Commission-approved Acquirer does not intend to make an offer of employment to that employee;

*provided further* that, if the Respondent notifies the Commission-approved Acquirer in writing of its desire to make an offer of employment to a particular Season-All Brand Products Key Employee and the Commission-approved Acquirer does not make an offer of employment to that employee within twenty (20) Days of the date the Commission-approved Acquirer receives such notice, the Respondent may make an offer of employment to that employee.

- F. Pending divestiture of the Season-All Assets, Respondent shall:
1. not use, directly or indirectly, any Season-All Confidential Business Information related to the research, development, manufacture, marketing, commercialization, importation, exportation, cost, pricing, promotion, supply, sales, sales support or use of the Season-All Brand Products other than as necessary to comply with: (a) the requirements of the Orders; (b) Respondent's obligations to the Commission-approved Acquirer under the terms of any Divestiture Agreement related to the Season-All Assets; or (c) applicable law(s);
  2. not disclose or convey, directly or indirectly, any Season-All Confidential Business Information to any Person except the Commission-approved Acquirer other than as necessary to comply with: (a) the requirements of the Orders; (b) Respondent's obligations to the Commission-approved Acquirer under the terms of any Divestiture Agreement related to the Season-All Assets; or (c) applicable law(s);
  3. not disclose or convey, directly or indirectly, any Season-All Confidential Business Information related

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to the research, development, manufacture, marketing, commercialization, importation, exportation, cost, pricing, promotion, supply, sales, sales support or use of the Season-All Brand Products to Respondent's employees associated with McCormick's Branded Seasoned Salt Products and related business other than as necessary to comply with: (a) the requirements of the Orders; (b) Respondent's obligations to the Commission-approved Acquirer under the terms of any Divestiture Agreement related to the Season-All Assets; or (c) applicable law(s); and

4. institute procedures and requirements to ensure that employees identified above:
  - a. do not provide, disclose or otherwise make available, directly or indirectly, any Season-All Confidential Business Information in contravention of this Order to Maintain Assets; and
  - b. do not solicit, access or use any Season-All Confidential Business Information in contravention of this Order to Maintain Assets.

G. Not later than five (5) days after the date this Order to Maintain Assets becomes final, Respondent shall provide all of Respondent's employees and other personnel who may have Season-All Confidential Business Information with written or electronic notification (in a form similar to that attached as Appendix A to this Order to Maintain Assets), with return receipt requested, of the restrictions on the use of such information by Respondent's personnel. Respondent shall keep such receipts (or an electronic file of such receipts) for one (1) year after the Closing Date. Respondent shall provide a copy of the form of such notification to the Commission-approved Acquirer and the Commission. Respondent shall also obtain from each employee covered by this Paragraph G an agreement to abide by the applicable restrictions. Respondent shall

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maintain complete records of all such agreements at Respondent's corporate headquarters and shall provide an officer's certification to the Commission stating that such acknowledgment program has been implemented and is being complied with. Respondent shall monitor the implementation by its employees and other personnel of all applicable restrictions, and take corrective actions for the failure of such employees and personnel to comply with such restrictions or to furnish the written agreements and acknowledgments required by this Order to Maintain Assets.

- H. Respondent shall adhere to and abide by the Season-All Transitional Agreements. These Agreements shall not vary or contradict, or be construed to vary or contradict, the terms of the Orders, it being understood that nothing in the Orders shall be construed to reduce any obligations of Respondent under such Agreement(s), which are incorporated by reference into this Order to Maintain Assets and made a part hereof.
- I. The purpose of this Order to Maintain Assets is to maintain the full economic viability, marketability and competitiveness of the business associated with the Season-All Assets, to minimize any risk of loss of competitive potential for the business associated with the Season-All Assets, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Season-All Assets, except for ordinary wear and tear, pending divestiture of the Season-All Assets to a Commission-approved Acquirer.

**III.****IT IS FURTHER ORDERED** that:

- A. At any time after Respondent signs the Consent Agreement in this matter, the Commission may appoint an Interim Monitor to assure that Respondent expeditiously

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complies with all of its obligations and performs all of its responsibilities as required by the Orders and the Divestiture Agreement.

- B. The Commission shall select the Interim Monitor, subject to the consent of Respondent, which consent shall not be unreasonably withheld. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of a proposed Interim Monitor within ten (10) days after notice by the staff of the Commission to Respondent of the identity of any proposed Interim Monitor, Respondent shall be deemed to have consented to the selection of the proposed Interim Monitor.
- C. Not later than ten (10) days after the appointment of the Interim Monitor, Respondent shall execute an agreement that, subject to the prior approval of the Commission, confers on the Interim Monitor all the rights and powers necessary to permit the Interim Monitor to monitor Respondent's compliance with the relevant requirements of the Orders in a manner consistent with the purposes of the Orders.
- D. If an Interim Monitor is appointed pursuant to this Paragraph, Respondent shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Interim Monitor:
  - 1. The Interim Monitor shall have the power and authority to monitor Respondent's compliance with the divestiture and asset maintenance obligations and related requirements of the Orders, and shall exercise such power and authority and carry out the duties and responsibilities of the Interim Monitor in a manner consistent with the purposes of the Orders and in consultation with Commission staff;
  - 2. The Interim Monitor shall act in a fiduciary capacity for the benefit of the Commission;

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3. The Interim Monitor shall serve until the later of:
  - a. the completion by Respondent (or a Divestiture Trustee) of the divestiture of all Season-All Assets in a manner that satisfies the requirements of the Orders; or
  - b. the completion by Respondent of its obligations under the Orders pertaining to the Interim Monitor's service;

*provided, however,* that the Commission may extend or modify the period of the Interim Monitor's service as may be necessary or appropriate to accomplish the purposes of this Order to Maintain Assets.

- E. Subject to any demonstrated legally recognized privilege, the Interim Monitor shall have full and complete access to Respondent's personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Interim Monitor may reasonably request related to Respondent's compliance with its obligations under the Orders, including, but not limited to, its obligations related to the relevant Season-All Assets. Respondent shall cooperate with any reasonable request of the Interim Monitor and shall take no action to interfere with or impede the Interim Monitor's ability to monitor Respondent's compliance with the Orders.
- F. The Interim Monitor shall serve, without bond or other security, at the expense of Respondent on such reasonable and customary terms and conditions as the Commission may set. The Interim Monitor shall have authority to employ, at the expense of Respondent, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Interim Monitor's duties and responsibilities.



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- G. Respondent shall indemnify the Interim Monitor and hold the Interim Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Interim Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Interim Monitor.
- H. Respondent shall report to the Interim Monitor in accordance with the requirements of this Order to Maintain Assets and/or as otherwise provided in any agreement approved by the Commission. The Interim Monitor shall evaluate the reports submitted to the Interim Monitor by Respondent and any reports submitted by the Acquirer with respect to the performance of Respondent's obligations under the Orders or the Divestiture Agreement. Within one (1) month from the date the Interim Monitor receives these reports, the Interim Monitor shall report in writing to the Commission concerning performance by Respondent of its obligations under the Orders.
- I. Respondent may require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, that such agreement shall not restrict the Interim Monitor from providing any information to the Commission.
- J. The Commission may, among other things, require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Interim Monitor's duties.

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- K. If the Commission determines that the Interim Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Interim Monitor in the same manner as provided in this Paragraph.
- L. The Commission may on its own initiative, or at the request of the Interim Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Orders.

**IV.**

**IT IS FURTHER ORDERED** that, within thirty (30) Days after the date this Order to Maintain Assets becomes final, and every thirty (30) Days thereafter until Respondent has fully complied with its obligations to divest the Season-All Assets as required by Paragraphs II. A-E, G and III. of the related Decision and Order in this matter, Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order to Maintain Assets and the related Decision and Order; *provided, however*, that, after the Decision and Order in this matter becomes final, the reports due under this Order to Maintain Assets may be consolidated with, and submitted to the Commission at the same time as, the reports required to be submitted by Respondent pursuant to Paragraph VI. of the Decision and Order.

**V.**

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

- A. any proposed dissolution of Respondent;
- B. any proposed acquisition, merger or consolidation of Respondent; or

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- C. any other change in the 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 Order.

**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 Respondent, Respondent shall, without restraint or interference, permit any duly authorized representative(s) of the Commission:

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

**VII.**

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

- A. Three (3) Days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
- B. The day after the divestiture of the Season-All Assets, as required by and described in the Decision and Order, has

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been completed and Respondent notifies the Commission that all related assignments, conveyances, deliveries, grants, licenses, transactions, transfers and other transitions are complete, or the Commission otherwise directs that this Order to Maintain Assets be terminated.

By the Commission.

**PUBLIC APPENDIX A  
TO THE ORDER TO MAINTAIN ASSETS**

**NOTICE OF FTC ORDERS AND REQUIREMENT TO  
MAINTAIN CONFIDENTIALITY**

McCormick & Company, Incorporated (“McCormick”), sometimes referred to as “Respondent,” has entered into an Agreement Containing Consent Orders (“Consent Agreement”) with the Federal Trade Commission (“FTC”) providing for divestiture of certain assets and other relief in connection with McCormick’s acquisition of the Lawry’s and Adolph’s brands from Unilever N.V. (the “acquisition”). That Consent Agreement includes two orders: the Decision and Order and the Order to Maintain Assets (“Orders”). Both Orders are attached to this notice.

The Decision and Order requires McCormick to divest the Season-All® line of branded seasoned salt products. This line is hereinafter referred to as the “Season-All Business.” Both the Decision and Order and the Order to Maintain Assets require McCormick to restrict its use of “Season-All Confidential Business Information”, which is any information exclusively related to the research, development, manufacturing, marketing or

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sale of the Season-All Brand Products. When documents or data contain information related to Season-All and other products and topics, only the portion of the document or data related to Season-All is Confidential Business Information. Public information about Season-All or information McCormick lawfully receives about Season-All from a third party is not Confidential Business Information. Complete definitions of all capitalized terms in this notice can be found in Section I of the attached Decision and Order.

The Orders require McCormick to commit that, except in limited circumstances, no Season-All Confidential Business Information will be disclosed to or used by any employee who works for McCormick after the acquisition of the Lawry's and Adolph's branded products, including the Lawry's branded seasoned salt products. In particular, this is to protect Season-All Confidential Business Information from being used *in any way* for the development, manufacture, promotion, marketing or sale of any branded season salt product that is manufactured, marketed or sold by McCormick after the acquisition. The Decision and Order also requires McCormick to provide the buyer all the Season-All Assets with documents or portions of documents (including electronically stored material) that contain Season-All Confidential Business Information.

Under the Decision and Order, McCormick is required to divest the Season-All Assets to Morton International, Inc. ("Morton"). Until a complete divestiture of all of the Season-All Assets occurs, the requirements of the second order – the Order to Maintain Assets – are in place to maintain the continued marketability, viability and competitive vigor of the Season-All Assets, and to ensure that no Season-All Confidential Business Information is communicated to anyone other than Morton personnel or representatives, except to comply with the Orders, McCormick's agreement with Morton, or applicable laws.

You are receiving this notice because you are a McCormick employee who is or was directly involved in the research,

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development, manufacturing, distribution, sale, or marketing of the Season-All Brand Products and may have Season-All Confidential Business Information.

Except as permitted under the Orders, you must keep all Season-All Confidential Business Information confidential and must not provide, discuss, exchange, circulate, or otherwise disclose any Season-All Confidential Business to or with any other person whose job responsibilities relate to McCormick's Branded Season Salt Products. Finally, if you have documents that might contain Season-All Confidential Business Information and you have not received specific instructions as to how these documents should be delivered to Morton, you should contact Geoff Carpenter, Associate General Counsel.

The Decision and Order also restricts the functions that certain employees of McCormick can perform for the Respondent until January 1, 2009.

Any violation of the Decision and Order or the Order to Maintain Assets may subject McCormick to civil penalties and other relief as provided by law. If you have any questions regarding the contents of this notice, the confidentiality of information, the Decision and Order or the Order to Maintain Assets, you should contact Geoff Carpenter, Associate General Counsel.

**ACKNOWLEDGMENT**

I, \_\_\_\_\_ (print name), hereby acknowledge that I have read the above notification and agree to abide by its provisions.

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**DECISION AND ORDER**

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by McCormick & Company, Incorporated (“McCormick”), hereinafter “Respondent,” of the Lawry’s and Adolph’s brands from Conopco, Inc., an indirect subsidiary of Unilever N.V. (“Unilever”), and Respondent having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

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

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

## Decision and Order

1. Respondent McCormick is a corporation organized, existing and doing business under and by virtue of the laws of the state of Maryland, with its office and principal place of business located at 18 Loveton Circle, Sparks, MD 21152-6000.

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

**II.**

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

- A. “McCormick” or “Respondent” means McCormick & Company, Incorporated, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by McCormick, and the respective directors, officers, employees, agents, representatives, predecessors, successors, and assigns of each.
- B. “Unilever” means Unilever N.V., a corporation organized under the laws of the Netherlands, with its office and principal place of business located at Weena 455, 3013 AL Rotterdam, Netherlands. Unilever includes Conopco, Inc. (“Conopco”), the wholly-owned subsidiary of Unilever’s wholly-owned subsidiary, Unilever United States, Inc.
- C. “Commission” means the Federal Trade Commission.
- D. “Morton” means Morton International, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the state of Indiana, with its office and



## Decision and Order

principal place of business located at 123 North Wacker Drive, Chicago, IL 60606-1743. Morton is a wholly-owned subsidiary of Rohm and Haas Company, a Delaware corporation, with its principal executive offices located at 100 Independence Mall West, Philadelphia, PA 19106.

- E. “Acquisition” means the acquisition by McCormick of the Lawry’s and Adolph’s brands described in and contemplated by the Asset Purchase Agreement by and between McCormick and Conopco, dated as of November 13, 2007 (“McCormick/Unilever Agreement”).
- F. “Acquisition Date” means the date on which McCormick closes on the Acquisition pursuant to the McCormick/Unilever Agreement.
- G. “Branded Seasoned Salt Products” means any dry branded products or product formulations (not including private or store label) sold at retail, usually in glass or plastic bottles, that consist primarily of salt, contain at least two other different herbs, spices and/or other seasonings, and are labeled or otherwise described on the container as seasoned salt, including, but not limited to, any products meeting the foregoing definition and acquired by Respondent in connection with the Acquisition.
- H. “Closing Date” means the date on which Respondent (or a Divestiture Trustee) consummates the divestiture of the Season-All Assets to a Commission-approved Acquirer pursuant to and as required by Paragraph II. (or Paragraph III.) of this Order.
- I. “Commission-approved Acquirer” means: (1) Morton; or (2) another entity approved by the Commission to acquire the Season-All Assets that the Respondent is required to divest pursuant to this Order.

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- J. “Divestiture Agreement” means: (1) the Morton Asset Purchase Agreement; or (2) any agreement between the Respondent and another Commission-approved Acquirer (or between a Divestiture Trustee and a Commission-approved Acquirer) that has been approved by the Commission to accomplish the requirements of this Order, including all amendments, exhibits, attachments, agreements (including, but not limited to, all Season-All Transitional Agreements), and schedules thereto, related to the relevant assets to be divested, transferred, assigned, licensed, granted, delivered or otherwise conveyed, that have been approved by the Commission to accomplish the requirements of this Order.
- K. “Divestiture Trustee” means a trustee appointed by the Commission pursuant to Paragraph III. of this Order.
- L. “Manufacturing Agreement” means the Morton Transitional Manufacturing Agreement as defined in Paragraph I.BB.2 of this Order, or, if Morton is not the Commission-approved Acquirer, any other manufacturing agreement entered into by and between Respondent and another Commission-approved Acquirer, provided such other agreement receives the prior approval of the Commission.
- M. “Morton Asset Purchase Agreement” means the Asset Purchase Agreement by and between the Respondent and Morton, dated as of June 2, 2008, that is referenced and attached to this Order as Confidential Appendix I, including all amendments, exhibits, attachments, agreements (including, but not limited to: the Trademark and Formulation License Agreement dated as of the Closing Date, entered into by and between Morton and McCormick, appended Exhibit A; the Morton Transition Services Agreement, appended Exhibit B; the Morton Transitional Manufacturing Agreement, appended Exhibit

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C; and the Morton Transitional License Agreement, appended Exhibit D), and schedules thereto, related to the relevant Season-All Assets to be divested, transferred, assigned, licensed, granted, delivered or otherwise conveyed to Morton, and that have been approved by the Commission to accomplish the requirements of this Order in connection with the Commission's determination to make the Order final.

- N. "Order to Maintain Assets" means the Order to Maintain Assets issued by the Commission in this matter.
- O. "Person" means any individual, partnership, joint venture, firm, corporation, association, trust, unincorporated organization, joint venture, or other business or governmental entity, and any subsidiaries, divisions, groups or affiliates thereof.
- P. "Season-All Assets" means all of Respondent McCormick's rights, title and interest, tangible and intangible, worldwide, without limitation, in and to all of the following assets of the Season-All Business:
1. all Season-All Intellectual Property;
  2. all Season-All Confidential Business Information;
  3. all Season-All Sales and Marketing Materials;
  4. at the Commission-approved Acquirer's option, all finished inventory, on hand or in transit, packaging materials, marketing materials, raw materials and work-in-process relating to the Season-All Brand Products;
  5. all customer information, including a list of all customers and/or targeted customers for the Season-All Brand Products and the pricing and/or planned or

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proposed pricing of the Season-All Brand Products for such customers;

6. all unfilled customers orders for finished goods as of the Closing Date related to the Season-All Brand Products (a list of such orders is to be provided to the Commission-approved Acquirer within two (2) days after the Closing Date);
7. a copy of all vendor lists, and the names of all manufacturers and suppliers under contract with Respondent that produce for, or supply, Respondent with ingredients or packaging in connection with the manufacture, production, distribution or sale of the Season-All Brand Products;
8. at the option of the Commission-approved Acquirer as set forth in the Divestiture Agreement with such Acquirer and to the extent presently transferable, divisible or assignable, all rights, title and interest in and to agreements (except contracts of employment), express or implied, relating to the research, design, development, production, distribution, marketing, promotion, sale or after-sales support of the Season-All Brand Products, including contracts with customers, suppliers, contract manufacturers, sales representatives, distributors, agents, licensors and licensees;
9. all rights under warranties and guarantees, express or implied, to which McCormick is entitled and which it can presently convey, relating to the Season-All Brand Products;
10. all consents, licenses, certificates, registrations or permits issued, granted, given or otherwise made available by or under the authority of any government

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body or pursuant to any legal requirement, and all pending applications therefor or renewals thereof, to the extent presently assignable; and

11. all of the Respondent's books, records, books of account, sales and purchase records, lists of customers and prospects, lists of suppliers, marketing and promotional materials and other product information, including website content, pricing information, operations information, sales programs and any deviations and all other documents, files, records and other data and information of the Respondent (whether stored on hard or floppy disks or other media), relating to the operation of the Season-All Business; *provided, however*, that in cases in which documents or other materials included in the Season-All Assets contain information: (1) that relates both to the Season-All Business and to other products or businesses of Respondent and cannot be segregated in a manner that preserves the usefulness of the information as it relates to the Season-All Business; or (2) for which Respondent has a legal obligation to retain the original copies, Respondent shall be required to provide only copies or relevant excerpts of the documents and materials containing the information relating to the Season-All Business. In instances where such copies are provided to the Commission-approved Acquirer, and subject to appropriate confidentiality restrictions, Respondent shall provide the Commission-approved Acquirer or its outside counsel access to original documents under circumstances in which copies of documents are insufficient for evidentiary or regulatory purposes. The purpose of this proviso is to ensure that Respondent provides the Commission-approved Acquirer with the above-described information without requiring Respondent completely to divest itself of information that, in content, also relates to products and businesses other than the

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Season-All Business or allowing the Commission-approved Acquirer to use or disclose such information in connection with products or businesses other than the Season-All Business.

12. *Provided, however,* that the Season-All Assets shall not include:
- a. cash on hand, cash equivalents, bank deposits and investments (including stock, debt instruments, options and other instruments and securities) of Respondent;
  - b. accounts, notes receivable and similar rights of Respondent to receive payments arising out of the operation of the Season-All Business on or before the Closing Date;
  - c. tax refunds, tax, insurance and other claims or rights to recoveries and similar benefits of the Season-All Business on or before the Closing Date, and any prepaid items with respect to the Season-All Business on or before the Closing Date, except as otherwise provided in a Divestiture Agreement;
  - d. subject to any limited or transitional rights conveyed to the Commission-approved Acquirer in a Divestiture Agreement, including any Season-All Transitional Agreements, the name and mark “McCormick” and all derivatives and formatives thereof, including, but not limited to, the trademarks pertaining to the products set forth on Schedule 1.1(b)(vi) to the Morton Asset Purchase Agreement, together with all issued registrations and pending applications for registration with respect to the foregoing and all goodwill associated therewith;

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- e. unless requested by the Commission-approved Acquirer in a Divestiture Agreement: machinery, fixtures, equipment, vehicles, furniture, tools and other personal property associated with the manufacture, packaging, distribution, marketing or sale of the Season-All Brand Products;
- f. any other assets not covered in Paragraphs I.P.12.a – I.P.12.e, including without limitation trademarks and all issued registrations and pending applications for registration and all goodwill associated therewith, rights, products, property, documents, materials, records, information, or data relating or pertaining to Respondent McCormick’s products, operations, businesses or activities, that are not exclusively related to the Season-All Business or that are otherwise expressly excluded in a Divestiture Agreement; or
- g. any rights to use Respondent’s general business strategies or practices relating to products, product formulations, market research activities, methods or methodologies that McCormick uses in connection with other products in addition to Season-All Brand Products for the purpose of developing, marketing, manufacturing, promoting, managing, distributing, or selling its own brands and products, except as conveyed to the Commission-approved Acquirer in a Divestiture Agreement or through a nonexclusive license by Respondent as otherwise necessary to permit the continued use of the Season-All Assets in the Season-All Business in the same manner in which such assets were engaged at the time of the announcement of the proposed Acquisition.

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- Q. “Season-All Brand Products” means (A) those products consisting of: (1) Original Season-All® brand seasoned salt; (2) Garlic Season-All® brand seasoned salt; (3) Pepper Season-All® brand seasoned salt; (4) Spicy Season-All® brand seasoned salt; (5) 25% Less Sodium Season-All® brand seasoned salt; and (6) Season-All® brand coating mix; and (B) any other product under development or developed prior to the Closing Date to be marketed as a Branded Seasoned Salt Product under the Season-All® brand.
- R. “Season-All Brand Products Key Employee(s)” means salaried and management level employees of Respondent McCormick who have participated directly (irrespective of the portion of working time involved, but excluding participation that was a part of a broad executive management portfolio, or of oversight of legal, accounting, tax or financial compliance) in leading the formulation of retail brand marketing strategies, including marketing, promotion, and advertising strategies relating to the Season-All Brand Products in the United States within the one (1) year period immediately prior to the Closing Date. These employees include employees with primary responsibility for brand management, sales training, and market research for Season-All Brand Products, and those employees of Respondent that, within one (1) year prior to the Closing Date, have dedicated at least twenty (20) percent of working time to the Season-All Brand Products. In the event that Morton is the Commission-approved Acquirer, those employees will be deemed to be the individuals that are specifically identified in Appendix II to this Order.
- S. “Season-All Business” means all of the operations and business of Respondent McCormick relating to the research, development, manufacture, marketing,



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advertising, promotion, distribution, sale or after-sales support for the Season-All Brand Products.

- T. “Season-All Confidential Business Information” means, subject to Paragraphs I.P.11 – I.P. 12 of this Order, all information owned by, or in the possession or control of, Respondent that is not in the public domain and that is related to the research, development, manufacture, marketing, commercialization, importation, exportation, cost, pricing, supply, sales, sales support or use of the Season-All Brand Products; *provided, however*, that Season-All Confidential Business Information shall not include the following:
- (i) information that Respondent acquires from a third party or that subsequently falls within the public domain through no violation of this Order or breach of any confidentiality or non-disclosure agreement with respect to such information by Respondent;
  - (ii) information that is required by law to be publicly disclosed; or
  - (iii) information that does not relate to the Season-All Assets.
- U. “Season-All Copyrights” means, subject to Paragraphs I.P.11 - I.P.12 of this Order, all rights to all original works of authorship of any kind related to the Season-All Brand Products and any registrations and applications for registrations thereof, including, but not limited to, the following, as applicable: the Season-All Confidential Business Information; the Season-All Sales and Marketing Materials; development data and reports relating to the research, development, manufacture, marketing or sale of the Season-All Brand Products; sales forecasting models; Website content and advertising and display materials; all records, including customer lists and information, sales

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force call activity reports, vendor lists, sales data, slotting allowance data, manufacturing records, manufacturing processes and supplier lists; and all data contained in quality assurance and quality control information and documentation.

V. “Season-All Intellectual Property” means, subject to Paragraphs I.P.11 – I.P.12 of this Order, all of Respondent’s rights to:

1. Season-All Trademarks;
2. Season-All Trade Dress;
3. Season-All Manufacturing Technology;
4. Season-All Copyrights;
5. Season-All Patents; and
6. trade secrets, know-how, techniques, inventions, practices, methods, data contained in software, and other confidential or proprietary technical, business, research, development and other materials and information, and all rights in any jurisdiction to limit the use or disclosure thereof, anywhere in the world, of or relating to the Season-All Brand Products.

*Provided, however,* that where such intellectual property (other than Season-All Trademarks or Season-All Trade Dress) also relates to other brands or businesses of Respondent McCormick, Respondent McCormick shall grant the Commission-approved Acquirer the rights to use such intellectual property on a non-exclusive basis in connection with the Season-All Business as is needed to accomplish the purposes of this Order.

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- W. “Season-All Manufacturing Technology” means, subject to Paragraphs I.P.11 – I.P.12 of this Order, all technology, technical information, data, trade secrets, know-how, and proprietary information, anywhere in the world, related to the manufacture (including, at the Commission-approved Acquirer’s option as set forth in the Divestiture Agreement, all equipment used to manufacture), bottling and packaging of the Season-All Brand Products, including, but not limited to, all recipes, formulas, formulations, blend specifications, processes, procedures, product development records, trade secrets, manuals, quality assurance and quality control information and documentation, regulatory communications, and all other information relating to the manufacturing and packaging process, and vendor and supplier lists.
- X. “Season-All Patents” means, subject to Paragraphs I.P.11 – I.P.12 of this Order, all patents, patents pending, patent applications and statutory invention registrations, including reissues, divisions, continuations, continuations-in-part, supplementary protection certificates, extensions and reexaminations thereof, all inventions disclosed therein, all rights therein provided by international treaties and conventions, and all rights to obtain and file for patents and registrations thereto, anywhere in the world, related to the Season-All Brand Products.
- Y. “Season-All Sales and Marketing Materials” means, subject to Paragraphs I.P.11 – I.P.12 of this Order, all sales, marketing and promotional materials used anywhere in the world with respect to the Season-All Brand Products as of the Closing Date, including, without limitation: all advertising materials; customer lists; contribution statements; Internet/Web sites and domain name(s) (uniform resource locators), and registration(s) thereof, and related materials; product data; profit and loss statements; price lists; mailing lists; sales materials; marketing information (*e.g.*, customer sales and

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competitor data); catalogs, sales promotion literature and other promotional materials; spend records related to advertising, marketing or promotion; training and other materials associated with the Season-All Brand Products; and all copyrights in and to the Season-All Sales and Marketing Materials. Season-All Sales and Marketing Materials include all assets, rights and other intellectual property set forth on Schedule 1.1(a)(iii)(B) to the Morton Asset Purchase Agreement.

- Z. “Season-All Trade Dress” means, subject to Paragraphs I.P.11 – I.P.12 of this Order, the current trade dress of the Season-All Brand Products, including, but not limited to, product packaging associated with the sale of Season-All Brand Products anywhere in the world, logos, domain names, and the lettering of the Season-All Brand Products’ trade name or brand name; but excluding any portion of any such trade dress rights that is solely related to Respondent McCormick or is also related to any of its businesses, products, or brands other than the Season-All Brand Products. Season-All Trade Dress includes all assets, rights and other intellectual property set forth on Schedule 1.1(a)(iii)(B) to the Morton Asset Purchase Agreement.
- AA. “Season-All Trademarks” means, subject to Paragraphs I.P.11 – I.P.12 of this Order, all trademarks, trade names and brand names, including registrations and applications for registration thereof (and all renewals, modifications, and extensions thereof), and all common law rights, and the goodwill symbolized by and associated therewith, anywhere in the world, for or relating to the Season-All Brand Products. Season-All Trademarks include all assets, rights and other intellectual property set forth on Schedule 1.1(a)(ii)(B) to the Morton Asset Purchase Agreement.

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- BB. “Season-All Transitional Agreements” means any transitional agreements or arrangements entered into by and between Respondent McCormick and a Commission-approved Acquirer that receives the prior approval of the Commission, including, but not limited to, the following agreements:
1. The Agreement for Transition Services entered into by and between McCormick and Morton dated as of the Closing Date, appended to the Morton Asset Purchase Agreement as Exhibit B, and all amendments, exhibits, attachments, and schedules thereto (“Morton Transition Services Agreement”);
  2. The Manufacturing Agreement entered into by and between Morton and McCormick dated as of the Closing Date, appended to the Morton Asset Purchase Agreement as Exhibit C, and all amendments, exhibits, attachments, and schedules thereto (“Morton Transitional Manufacturing Agreement”); and
  3. The License Agreement entered into by and between McCormick and Morton dated as of the Closing Date, appended to the Morton Asset Purchase Agreement as Exhibit D, and all amendments, exhibits, attachments, and schedules thereto (“Morton Transitional License Agreement”).
- CC. “Transition Services Agreement” means the Morton Transition Services Agreement as defined in Paragraph I.BB.1. of this Order, or, if Morton is not the Commission-approved Acquirer, any other transition services agreement entered into by and between Respondent and another Commission-approved Acquirer, provided such other agreement receives the prior approval of the Commission.

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**II.****IT IS FURTHER ORDERED** that:

- A. Not later than fifteen (15) days after the Acquisition Date, Respondent shall divest the Season-All Assets, absolutely and in good faith, to Morton pursuant to and in accordance with the Morton Asset Purchase Agreement. The Morton Asset Purchase Agreement is incorporated by reference into this Order and made a part hereof as Confidential Appendix I. Any failure by Respondent to comply with the Morton Asset Purchase Agreement shall constitute a failure to comply with this Order. The Morton Asset Purchase Agreement shall not vary or contradict, or be construed to vary or contradict, the terms of this Order. Nothing in this Order shall reduce, or be construed to reduce, any rights or benefits of Morton, or any obligations of Respondent, under the Morton Asset Purchase Agreement. If any term of the Morton Asset Purchase Agreement varies from the terms of this Order (“Order Term”), then to the extent that Respondent cannot fully comply with both terms, the Order Term shall determine Respondent’s obligations under this Order. Notwithstanding any paragraph, section, or other provision of the Morton Asset Purchase Agreement, any failure by Respondent to meet any condition precedent to closing (whether waived or not) or any modification of the Morton Asset Purchase Agreement, without the prior approval of the Commission, shall constitute a failure to comply with this Order.

*Provided, however,* that if Respondent has divested the Season-All Assets to Morton prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondent that Morton is not an acceptable purchaser of the Season-All Assets, then Respondent shall

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immediately rescind the transaction with Morton and shall divest the Season-All Assets within one hundred eighty (180) days from the date the Order becomes final, absolutely and in good faith, at no minimum price, to a Commission-approved Acquirer and only in a manner that receives the prior approval of the Commission;

*Provided further, however,* that if the Respondent has divested the Season-All Assets to Morton prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies the Respondent that the manner in which the divestiture was accomplished is not acceptable, the Commission may direct the Respondent, or appoint a Divestiture Trustee, to effect such modifications to the manner of divestiture of the Season-All Assets to Morton (including, but not limited to, entering into additional agreements or arrangements) as the Commission may determine is necessary to satisfy the requirements of this Order;

*Provided further, however,* that Respondent may not modify or amend any Divestiture Agreement without receiving the prior approval of the Commission.

- B. No later than the Closing Date, Respondent shall secure all consents, assignments, and waivers from all Persons that are necessary to effectuate the divestiture, transfer, assignment or other conveyance of the Season-All Assets to a Commission-approved Acquirer.
- C. Respondent shall:
  - 1. submit and deliver to the Commission-approved Acquirer, at Respondent's expense, in good faith and as soon as practicable, in a manner that ensures its completeness and accuracy, all Season-All Confidential Business Information;

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2. provide the Commission-approved Acquirer with access to all Season-All Confidential Business Information and to employees who possess or are able to locate or identify the books, records, and files that contain Season-All Confidential Business Information pending complete delivery of all the Season-All Confidential Business Information;
  3. not use, directly or indirectly, any Season-All Confidential Business Information related to the research, development, manufacturing, marketing, or sale of the Season-All Assets other than as necessary to comply with the requirements of this Order or applicable law;
  4. not provide, disclose, convey or otherwise make available, directly or indirectly, any Season-All Confidential Business Information to any person except the Commission-approved Acquirer, except as required by law.
- D. Not later than five (5) days after the Acquisition Date, or the date on which the Order to Maintain Assets becomes final, whichever is earlier, Respondent shall provide written or electronic notification of the restrictions on the use of the Season-All Confidential Business Information by Respondent's personnel to all of Respondent's employees who:
1. are, or were, directly involved in the research, development, manufacturing, distribution, sale or marketing of the Season-All Brand Products; and
  2. may have Season-All Confidential Business Information.



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## E. Respondent shall:

1. provide such notification (in a form similar to that attached as Appendix B to the Order to Maintain Assets) by e-mail with return receipt requested or by whatever manner or form of transmission as will assure receipt and acknowledgment by Respondent's employees, and keep a file of such receipts for one (1) year after the Closing Date.
2. maintain complete records of all such files at Respondent's corporate headquarters, and provide an officer's certification to the Commission stating that such an acknowledgment and file retention program has been implemented and is being complied with.

## F. Respondent shall prohibit any Season-All Brand Products Key Employee from participating in formulation of the marketing, promotion or advertising strategies or in the research and development of Respondent's Branded Seasoned Salt Products until January 1, 2009.

## G. Respondent shall require, to the extent lawful, as a condition of continued employment following the divestiture of the Season-All Assets, that each Season-All Brand Products Key Employee retained by Respondent, and the direct supervisor(s) of any such employee, sign a confidentiality agreement pursuant to which such employee shall be required to maintain all Season-All Confidential Business Information related to the Season-All Brand Products strictly confidential, including the nondisclosure of such information to all other employees, executives, or other personnel of Respondent (other than as necessary to comply with the requirements of this Order) until January 1, 2009.

## H. Respondent shall:

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1. for a period of up to one (1) year from the Closing Date, provide the Commission-approved Acquirer with the opportunity to enter into employment contracts with the Season-All Brand Products Key Employees. This period is hereinafter referred to as the “Employee Access Period”; and
  2. not later than ten (10) days after the Closing Date at the request of the Commission-approved Acquirer, or otherwise upon reasonable notice and request by the Commission-approved Acquirer, and subject to compliance with all laws: (1) provide the Commission-approved Acquirer with a list of all the Season-All Brand Products Key Employees; (2) allow the Commission-approved Acquirer to interview any of the Season-All Brand Products Key Employees; and (3) allow the Commission-approved Acquirer access to the personnel files and other documentation (“Employee Information”) relating to any such Season-All Brand Products Key Employee.
  3. provide an opportunity for the Commission-approved Acquirer to: (1) meet personally, and outside of the presence or hearing of any employee or agent of Respondent, with any one or more of the Season-All Brand Products Key Employees; and (2) make offers of employment to any one or more of the Season-All Brand Products Key Employees.
- I. Respondent shall:
1. during the Employee Access Period, not interfere with the hiring or employing by the Commission-approved Acquirer of Season-All Brand Products Key Employees, and remove any impediments within the control of Respondent that may deter these employees from accepting employment with the Commission-

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approved Acquirer, including, but not limited to, any noncompete provisions or nondisclosure provisions (to the extent that they relate to Season-All Brand Products) of employment or other contracts with Respondent that would affect the ability or incentive of those individuals to be employed by the Commission-approved Acquirer. In addition, Respondent shall not make any counteroffer to a Season-All Assets Key Employee who receives a written offer of employment from the Commission-approved Acquirer;

*Provided, however,* that this Paragraph II.I.1. shall not prohibit the Respondent from making offers of employment to or employing any Season-All Brand Products Key Employee during the Employee Access Period where the Commission-approved Acquirer has notified the Respondent in writing that the Commission-approved Acquirer does not intend to make an offer of employment to that employee;

*Provided further* that if the Respondent notifies the Commission-approved Acquirer in writing of their desire to make an offer of employment to a particular Season-All Brand Products Key Employee and the Commission-approved Acquirer does not make an offer of employment to that employee within twenty (20) days of the date the Commission-approved Acquirer receives such notice, the Respondent may make an offer of employment to that employee;

2. until the Closing Date, provide all Season-All Brand Products Key Employees with reasonable financial incentives to continue in their positions and to market and promote the Season-All Brand Products consistent with past practices and/or as may be necessary to preserve the marketability, viability and competitiveness of the Season-All Assets and to promote successful execution of the pre-Acquisition

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marketing plans related to the Season-All Brand Products. Such incentives shall include a continuation of all employee compensation and benefits offered by Respondent until the Closing Date has occurred, including regularly scheduled raises, bonuses, and vesting of pension benefits (as permitted by law);

*Provided, however,* that nothing in this Order requires or shall be construed to require the Respondent to terminate the employment of any employee or prevent Respondent from continuing the employment of Season-All Brand Products Key Employees (other than those conditions contained in this Order) in connection with the Acquisition or prevents the Respondent from continuing the employment of the Season-All Brand Products Key Employees in connection with the Acquisition; and

3. for a period of one (1) year from the Closing Date, not:
  - a. directly or indirectly, solicit or otherwise attempt to induce any employee of the Commission-approved Acquirer with any amount of responsibility related to the Season-All Assets (“Divestiture Employee”) to terminate his or her employment relationship with the Commission-approved Acquirer; or
  - b. hire any Divestiture Employee;

*Provided, however,* Respondent may hire any former Divestiture Employee whose employment has been terminated by the Commission-approved Acquirer or who independently applies for employment with the Respondent, as long as such employee was not solicited in violation of the nonsolicitation requirements contained herein;

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*Provided further, however,* Respondent may do the following: (1) hire a Divestiture Employee who responds to an advertisement for employees in newspapers, trade publications or other media not targeted specifically at the Divestiture Employees; or (2) hire a Divestiture Employee who contacts Respondent on his or her own initiative without any direct or indirect solicitation or encouragement from the Respondent.

- J. Upon reasonable notice and request by the Commission-approved Acquirer, and for a period not to exceed eighteen (18) months, Respondent shall make available to the Commission-approved Acquirer such personnel, assistance and training as the Commission-approved Acquirer might reasonably need to transfer the Season-All Assets pursuant to a Transition Services Agreement, and shall continue providing such personnel, assistance and training, at the request of the Commission-approved Acquirer, until the Season-All Assets are completely transferred to the Commission-approved Acquirer in a manner that fully promotes their viability and commercial usefulness. In the case of a Commission-approved Acquirer other than Morton, this assistance may include, at the Commission-approved Acquirer's sole discretion, but is not limited to, such assistance as is contemplated in the Morton Transition Services Agreement, attached to this Order as Exhibit B of the Morton Asset Purchase Agreement.
- K. Upon reasonable notice and request by the Commission-approved Acquirer, and subject to appropriate safeguards against the transmittal of confidential or competitively-sensitive information, Respondent shall provide, in a timely manner, the assistance of knowledgeable employees of the Respondent to assist the Commission-approved Acquirer (1) to prosecute any pending patent or trademark applications included in the divested Season-All Assets, and (2) to defend against, respond to, or otherwise

## Decision and Order

participate in any litigation related to the divested Season-All Assets.

- L. Upon reasonable notice and request by the Commission-approved Acquirer, and subject to appropriate safeguards against the transmittal of confidential or competitively-sensitive information, Respondent shall enter into a Manufacturing Agreement with the Commission-approved Acquirer for the supply of the divested Season-All Brand Products for a period not to exceed eighteen (18) months to provide a steady supply of the divested Season-All Brand Products until such time as the Commission-approved Acquirer is able to obtain or manufacture an independent supply; *provided, however*, Respondent may not modify or amend such Manufacturing Agreement without receiving the prior approval of the Commission.
  
- M. The purpose of this Paragraph II. of this Order is to ensure the continuation of the Season-All Assets as part of an ongoing viable enterprise engaged in the Season-All Business in the same manner in which such assets were engaged at the time of the announcement of the proposed Acquisition and to remedy the lessening of competition alleged in the Commission's complaint.

**III.**

**IT IS FURTHER ORDERED** that:

- A. If Respondent has not divested all of the Season-All Assets and fully complied with all of the divestiture-related obligations as required by Paragraph II. of this Order, the Commission may appoint a trustee to divest the Season-All Assets in a manner that satisfies the requirements of Paragraph II. of this Order. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission

## Decision and Order

Act, 15 U.S.C. § 45(*l*), or any other statute enforced by the Commission, Respondent shall consent to the appointment of a Divestiture Trustee in such action to divest the relevant assets in accordance with the terms of this Order. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(*l*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondent to comply with this Order.

- B. The Commission shall select the Divestiture Trustee, subject to the consent of Respondent, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondent of the identity of any proposed Divestiture Trustee, Respondent shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
- C. Within ten (10) days after appointment of a Divestiture Trustee, Respondent shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the relevant divestiture or transfer required by the Order.
- D. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Order, Respondent shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:

## Decision and Order

1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver or otherwise convey the relevant assets that are required by this Order to be assigned, granted, licensed, divested, transferred, delivered or otherwise conveyed.
2. The Divestiture Trustee shall have twelve (12) months from the date the Commission approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve (12) month period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission; *provided, however*, the Commission may extend the divestiture period only two (2) times.
3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered or otherwise conveyed by this Order and to any other relevant information as the Divestiture Trustee may request. Respondent shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondent shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondent shall extend the time for divestiture under this Paragraph III. in an amount equal to the delay, as determined by the Commission



## Decision and Order

or, for a court-appointed Divestiture Trustee, by the court.

4. The Divestiture Trustee shall use commercially reasonable best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent's absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to a Commission-approved Acquirer as required by this Order;

*Provided, however,* if the Divestiture Trustee receives bona fide offers from more than one acquiring Person, and if the Commission determines to approve more than one such acquiring Person, the Divestiture Trustee shall divest to the acquiring Person selected by Respondent from among those approved by the Commission;

*Provided further, however,* that Respondent shall select such Person within five (5) days of receiving notification of the Commission's approval.

5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed Divestiture

## Decision and Order

Trustee, by the court, of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of Respondent, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.

6. Respondent shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee.
7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order.
8. The Divestiture Trustee shall act in a fiduciary capacity for the benefit of the Commission.
9. The Divestiture Trustee shall report in writing to Respondent and to the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.
10. Respondent may require the Divestiture Trustee and each of the Divestiture Trustee's consultants,

## Decision and Order

accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement;

*Provided, however,* such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.

- E. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph III.
- F. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

**IV.**

**IT IS FURTHER ORDERED** that for a period of ten (10) years from the date this Order becomes final, Respondent shall not, without providing advance written notification to the Commission in a manner described in this paragraph, directly or indirectly:

- A. Acquire:
  - 1. any assets for use in the development, manufacture or sale of a Branded Seasoned Salt Product from any Person other than Respondent who develops, manufactures, or sells Branded Seasoned Salt Products in the United States, other than an acquisition in the ordinary course of business; or

## Decision and Order

2. a cumulative financial interest in excess of one (1) percent in any Person other than Respondent who develops, manufactures, or sells Branded Seasoned Salt Products in the United States; or
- B. Enter into any contract to participate in the management of any Person other than Respondent who develops, manufactures, or sells Branded Seasoned Salt Products in the United States. Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended, and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of Respondent and not of any other party to the transaction. Respondent shall provide the notification to the Commission at least thirty (30) days prior to consummating any such transaction (hereinafter referred to as the “first waiting period”). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Respondent shall not consummate the transaction until thirty (30) days after substantially complying with such request. Early termination of the waiting periods in this Paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition. *Provided, however,* that prior notification shall not be required by this Paragraph for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

## Decision and Order

**V.****IT IS FURTHER ORDERED** that:

- A. Within thirty (30) days after the date this Order becomes final and every thirty (30) days thereafter until Respondent has fully complied with the provisions of Paragraphs II. A-E, G, and III. of this Order, Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it has complied, is complying, and will comply with this Order and with the Order to Maintain Assets. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with this Order and with the Order to Maintain Assets, including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties contacted. Respondent shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.
  
- B. Beginning one (1) year after the date this Order becomes final, and annually thereafter on the anniversary of the date this Order becomes final, for the next nine (9) years, Respondent shall submit to the Commission verified written reports setting forth in detail the manner and form in which it is complying and has complied with this Order, the Order to Maintain Assets, and the Divestiture Agreements.

## Decision and Order

**VI.**

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

- A. any proposed dissolution of Respondent,
- B. any proposed acquisition, merger or consolidation of Respondent, or
- C. any other change in the 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 Order.

**VII.**

**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 Respondent, Respondent shall, without restraint or interference, permit any duly authorized representative(s) of the Commission:

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

Decision and Order

**VIII.**

**IT IS FURTHER ORDERED** that this Order shall terminate on September 12, 2018.

By the Commission.

**CONFIDENTIAL APPENDIX I**

**MORTON ASSET PURCHASE AGREEMENT  
[Redacted From Public Record  
But Incorporated By Reference]**

**APPENDIX II**

**SEASON-ALL BRAND PRODUCTS KEY EMPLOYEES**

Margaret Kime, Director of Flavor Enhancers

Dina Clark, Senior Marketing Manager for Flavor Enhancers

Beth Brubaker, Product Manager for Flavor Enhancers

Kim Hart, Associate Product Manager for Flavor Enhancers

Analysis to Aid Public Comment

**ANALYSIS OF THE CONSENT ORDERS TO AID PUBLIC  
COMMENT****I. Introduction**

The Federal Trade Commission (“Commission”) has accepted subject to final approval, an Agreement Containing Consent Orders (“Consent Agreement”) from McCormick & Company, Incorporated (“McCormick” or “Respondent”), which is designed to remedy the anticompetitive effects that would otherwise result from McCormick’s proposed acquisition of Unilever’s Lawry’s and Adolph’s brands of seasoned salt products. Under the terms of the proposed Consent Agreement, McCormick is required to divest its entire Season-All business to an up-front buyer, Morton International, Inc. (“Morton” or “Purchaser”).

The proposed Consent Agreement has been placed on the public record for thirty (30) days to solicit comments from interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the proposed Consent Agreement and will decide whether it should withdraw from the proposed Consent Agreement, modify it, or make final the Decision and Order (“Order”).

Pursuant to an Asset Purchase Agreement dated November 13, 2007 (the “Acquisition Agreement”), McCormick proposes to acquire the Lawry’s and Adolph’s brands of marinades, spice, and seasoning products (“Lawry’s”) from Unilever N.V., a Netherlands corporation, for approximately \$605 million in cash. The Commission’s complaint alleges that the Proposed Acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by lessening competition in the market for branded seasoned salt in the United States.



## Analysis to Aid Public Comment

**II. Description of the Parties**

McCormick is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Maryland. The company manufactures, markets, and sells spices, seasonings, and flavors to grocery retailers and the food industry. In 2006, McCormick's sales were approximately \$2.7 billion.

Unilever N.V., a Netherlands corporation, is an international manufacturer of leading brands in the food, home care, and personal care industry, including Lawry's and Adolph's. In 2006, Lawry's and Adolph's brands combined sales were approximately \$153 million.

**III. Branded Seasoned Salt**

The relevant product market in which to assess the competitive effects of the proposed Acquisition is the manufacture and sale of branded seasoned salt products. Branded seasoned salt products include several different types of spices, including seasoned salt, garlic salt, and reduced sodium varieties. The evidence indicates that consumers, if faced with a five to ten percent increase in the price of branded seasoned salt, would not switch to other spice blends or seasoning products.

The relevant geographic market in which to assess the impact of the Proposed Acquisition is the United States. Brand equity plays a critical role in determining the competitive strength of a seasoned salt product. Consistent with Commission findings in previous branded consumables cases, the need for distribution, infrastructure, and a U.S. sales force creates significant impediments to the ability of foreign firms to successfully and competitively sell branded seasoned salt into the United States.

The United States market for branded seasoned salt is highly concentrated. Today, this approximately \$100 million market consists of two significant branded products: Lawry's line of seasoned salt products and McCormick's Season-All products.

## Analysis to Aid Public Comment

The Proposed Acquisition would significantly increase market concentration and eliminate substantial competition between the only two significant suppliers of branded seasoned salt products in the United States. As a result of the acquisition, McCormick would account for nearly 80% of the sales of branded seasoned salt products in the United States.

Consumers have benefitted from the competition between McCormick and Lawry's on pricing, discounts, promotional trade spending, and product innovation. Thus, unremedied, the proposed acquisition likely would cause significant anticompetitive harm by enabling McCormick to profit by unilaterally raising the prices of one or both products above pre-merger levels, as well as reducing its incentives to innovate and develop new products.

**IV. Entry**

Entry into this market would require the investment of high sunk costs to, among other things, develop products, establish a brand name, and provide promotional funding and advertising to support the product(s), which would be difficult to justify given the market structure and sales opportunities in the affected markets. Even if a new entrant were willing to take on such investments, it would also face the difficult task of convincing retailers to carry its products. As a result, new entry into any of these markets sufficient to achieve a significant market impact within two years is unlikely.

**V. The Terms of the Agreement Containing Consent Orders**

The proposed Consent Agreement will remedy the Proposed Acquisition's anticompetitive effects in the relevant market. The Consent Agreement preserves competition in the branded seasoned salt market by requiring McCormick to divest its Season-All (seasoned salt spice blends) business to an up-front buyer, Morton. The Season-All assets include: Season-All

## Analysis to Aid Public Comment

seasoned salt, Garlic Season-All seasoned salt, Pepper Season-All seasoned salt, Spicy Season-All seasoned salt, 25% Less Sodium Season-All seasoned salt, and Season-All coating mix.

The Commission is satisfied that Morton is a well-qualified acquirer of the Season-All business. Morton supplies an extensive variety of salt products to the food service industry. These products currently include table salt, kosher salt, French fry salt, as well as disposable shakers, portion packets, water softening salts, and ice control salts. Morton has the resources, technical skills, and experience to ensure the continued success of the Season-All business.

The proposed Consent Agreement requires that the divestitures occur no later than ten (10) business days after the acquisition is consummated. However, if McCormick divests the Season-All business to Morton during the public comment period, and if, at the time the Commission decides to make the order final, the Commission notifies Respondent that Purchaser is not an acceptable acquirer or that the asset purchase agreement with Purchaser is not an acceptable manner of divestiture, then Respondent must immediately rescind the transaction in question and divest those assets to another buyer within three (3) months of the date the order becomes final. At that time, Respondent must divest those assets only to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

The proposed Consent Agreement also enables the Commission to appoint a trustee to divest any assets identified in the order that Respondent has not divested to satisfy the requirements of the order. In addition, the order enables the Commission to seek civil penalties against Respondent for non-compliance with the order.

The proposed Consent Agreement further requires McCormick to maintain the viability of the assets identified for divestiture. Among other requirements related to maintaining

## Analysis to Aid Public Comment

operations of the assets, the proposed Consent Agreement requires McCormick to: (1) maintain the viability, competitiveness, and marketability of the assets to be divested; (2) not cause the wasting or deterioration of the assets to be divested; (3) not sell, transfer, encumber, or otherwise impair the assets' marketability or viability; (4) maintain the assets consistent with past practices; (5) use best efforts to preserve the assets' existing relationships with suppliers, customers, and employees; and (6) keep and maintain the assets at inventory levels consistent with past practices.

The proposed Consent Agreement prohibits McCormick, for ten (10) years, from acquiring, without providing the Commission with prior notice, any other seasoned salt product, or any interest in any other spice blends business. The provisions regarding prior notice are consistent with prior Orders. The proposed Consent Agreement does not restrict McCormick from expanding its line of spices.

McCormick is required to file compliance reports with the Commission, the first of which is due within thirty (30) days of the date on which Respondent signed the proposed Consent Agreement, and every thirty (30) days thereafter until the divestitures are completed, and annually for ten (10) years.

The purpose of this analysis is to facilitate public comment on the proposed Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Decision and Order and the Order to Maintain Assets, or to modify their terms in any way.

## Complaint

## IN THE MATTER OF

**SUN PHARMACEUTICAL INDUSTRIES LTD.**

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS  
OF SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE FEDERAL  
TRADE COMMISSION ACT

*Docket C-4230; File No. 071 0193*

*Complaint, August 12, 2008 – Decision, September 16, 2008*

This consent order addresses the proposed acquisition of Taro Pharmaceutical Industries Ltd. by Sun Pharmaceutical Industries Ltd. Both companies develop and manufacture generic pharmaceutical products. The transaction likely would lead to anticompetitive effects in the U.S. markets for three different forms of carbamazepine, an anticonvulsant that is used primarily as an anti-epileptic drug. Pursuant to the order, Sun is required to divest all of its rights and assets necessary to manufacture and market (1) generic immediate-release carbamazepine tablets, (2) generic chewable carbamazepine tablets, and (3) generic extended-release carbamazepine tablets to Torrent Pharmaceuticals Ltd. or another Commission-approved acquirer. If the parties fail to divest within six months, the Commission may appoint a trustee to divest the products. To ensure that the divestitures are successful, the order requires Sun to provide transitional services to enable the acquirer to obtain all of the necessary approvals from the FDA. These transitional services include technology transfer assistance to manufacture the products in substantially the same manner and quality employed or achieved by Sun.

*Participants*

For the *Commission*: *Daniel P. Ducore, Leslie Farber, Mark Frankena, Laura Hosken, David L. Inglefield, Christopher Metcalf, Michael R. Moiseyev, James Southworth, and David Von Nirschl.*

For the *Respondent*: *Jessica K. Delbaum and Kenneth S. Prince, Shearman & Sterling LLP.*

## Complaint

**COMPLAINT**

Pursuant to the Clayton Act and the Federal Trade Commission Act, and its authority thereunder, the Federal Trade Commission (“Commission”), having reason to believe that Respondent Sun Pharmaceutical Industries Ltd. (“Sun”), a corporation subject to the jurisdiction of the Commission, proposes to acquire all of the voting securities of Taro Pharmaceutical Industries Ltd. (“Taro”), a corporation subject to the jurisdiction of the Commission, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act (“FTC Act”), as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

**I. DEFINITIONS**

1. “Commission” means the Federal Trade Commission.
2. “FDA” means the United States Food and Drug Administration.
3. “Sun” or “Respondent” means Sun Pharmaceutical Industries Ltd., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Sun (including, but not limited to, Alkaloida Chemical Company Exclusive Group Ltd. and Aditya Acquisition Company Ltd.) and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. After the Acquisition, Sun shall include Taro.
4. “Taro” means Taro Pharmaceutical Industries Ltd., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Taro (including, but not

## Complaint

limited to, Taro Pharmaceuticals U.S.A., Inc.), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

**II. RESPONDENT**

5. Respondent Sun Pharmaceutical Industries Ltd., is a corporation organized, existing and doing business under and by virtue of the laws of Republic of India, with its headquarters address at Acme Plaza, Andheri Kurla Road, Andheri (East), Mumbai 400 059 India, and registered office of its United States subsidiary, Sun Pharmaceutical Industries Inc., at 29714 Orion Court, Farmington Hills, Michigan 48334-4144.

6. Respondent, through its majority-owned U.S. subsidiary Caraco Pharmaceutical Laboratories, Ltd., is engaged in the research, development, manufacture, and sale of generic pharmaceutical products in the United States.

7. Respondent is, and at all times relevant herein has been, engaged in commerce, as “commerce” is defined in Section 1 of the Clayton Act as amended, 15 U.S.C. § 12, and is a corporation whose business is in or affects commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

**III. ACQUIRED COMPANY**

8. Taro is a corporation organized, existing, and doing business under and by virtue of the laws of Israel with its headquarters address at Italy House, Euro Park, Yakum 60972, Israel. Taro, among other things, is engaged in the research, development, manufacture, and sale of generic pharmaceutical products. Taro markets and sells generic products in the United States through its U.S. subsidiary, Taro Pharmaceuticals USA, Inc., located at 3 Skyline Drive, Hawthorne, New York 10532.

## Complaint

9. Taro is, and at all times relevant herein has been, engaged in commerce, as “commerce” is defined in Section 1 of the Clayton Act as amended, 15 U.S.C. § 12, and are corporations whose business is in or affects commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

**IV. THE PROPOSED ACQUISITION**

10. On May 18, 2007, Taro and subsidiaries of Sun entered into an Agreement of Merger (the “Merger Agreement”) whereby a subsidiary of Sun would acquire Taro via a merger. On May 28, 2008, Taro attempted to terminate the Merger Agreement. Sun has challenged the termination and has announced that it will exercise options, through its subsidiary Alkaloida Chemical, to purchase all the shares held by the controlling shareholders of Taro (the “Options”). In addition, Alkaloida Chemical, commenced a tender offer on June 30, 2008 for all outstanding ordinary shares (the “Tender Offer”). Through the exercise of the Options and/or the Tender Offer, Sun proposes to acquire all of the voting securities of Taro (“the Acquisition”).

**V. THE RELEVANT MARKETS**

11. For the purposes of this Complaint, the relevant lines of commerce in which to analyze the effects of the Acquisition are the research, development, manufacture, and sale of the following generic pharmaceutical products:

- a. immediate-release (“IR”) carbamazepine tablets;
- b. chewable carbamazepine tablets; and
- c. extended-release carbamazepine tablets.



## Complaint

12. For the purposes of this Complaint, the United States is the relevant geographic area in which to analyze the effects of the Acquisition in the relevant line of commerce.

**VI. THE STRUCTURE OF THE MARKETS**

13. Sun and Taro are two of only four suppliers of generic IR carbamazepine tablets in the United States: Taro, Sun, Teva Pharmaceutical Industries Ltd. (“Teva”), and Apotex, with respective market shares of approximately 51 percent, 18 percent, 27 percent, and 1 percent. Carbamazepine is an anticonvulsant used primarily to control and prevent epileptic seizures. The market for generic immediate-release carbamazepine tablets is already highly concentrated, and the Acquisition would raise the HHI concentration from 3,766 points to 5,653 points.

14. Generic chewable carbamazepine tablets are currently supplied by only three companies in the United States: Teva, Taro, and Sun, with respective market shares of approximately 65 percent, 30 percent, and 4 percent. Chewable carbamazepine tablets contain the same carbamazepine anticonvulsant drug as the immediate-release tablets, and thus, is used in the same manner to control and prevent epileptic seizures. The Acquisition would increase the HHI concentration in this market from 5,202 points to 5,456 points.

15. Sun and Taro are each awaiting FDA approval of their respective generic versions of Novartis’ Tegretol®-XR extended-release carbamazepine tablets. They are the only two companies developing generic extended-release carbamazepine tablets that will be AB-rated substitutes for Tegretol®-XR tablets. The Acquisition would create a monopoly in the market for generic extended-release carbamazepine tablets when both companies’ products are approved.

## Complaint

**VII. ENTRY CONDITIONS**

16. Entry into the relevant product markets described in Section V would not be timely, likely, or sufficient in its magnitude, character, and scope to deter or counteract the anticompetitive effects of the Acquisition. Entry would not take place in a timely manner because the combination of generic drug development times and FDA drug approval requirements takes at least two years. Entry would not be likely because the relevant markets are relatively small and in decline, limiting sales opportunities for any potential new entrant.

**VIII. EFFECTS OF THE ACQUISITION**

17. The effects of the Acquisition, if consummated, may be to substantially lessen competition and to tend to create a monopoly in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, in the following ways, among others:

a. by eliminating actual, direct, and substantial competition between Sun and Taro in the markets for the manufacture and sale of generic immediate-release carbamazepine tablets and chewable carbamazepine tablets, thereby: (1) increasing the likelihood that Sun will be able to unilaterally exercise market power in this market, (2) increasing the likelihood and degree of coordinated interaction between or among the remaining competitors, and (3) increasing the likelihood that customers would be forced to pay higher prices; and

b. by eliminating the expected actual, direct, and substantial competition between Sun and Taro upon their respective approvals in the market for the manufacture and sale of extended-release carbamazepine tablets, thereby: (1) increasing the likelihood that Sun will be able to unilaterally exercise market power in this market, and (2) increasing the

## Order to Maintain Assets

likelihood that customers would be forced to pay higher prices.

**IX. VIOLATIONS CHARGED**

18. The Acquisition described in Paragraph 10 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

19. The Acquisition described in Paragraph 10, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

**WHEREFORE, THE PREMISES CONSIDERED**, the Federal Trade Commission on this twelfth day of August, 2008, issues its Complaint against said Respondent.

By the Commission.

**ORDER TO MAINTAIN ASSETS**

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by Respondent Sun Pharmaceutical Industries Ltd. (“Sun”), hereinafter referred to as “Respondent,” of Taro Pharmaceutical Industries Ltd. (“Taro”) and Respondent having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and that, if issued by the Commission, would charge Respondent with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

## Order to Maintain Assets

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

The Commission having thereafter considered the matter and having determined to accept the executed Consent Agreement and to place such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings and issues this Order to Maintain Assets:

1. Respondent Sun Pharmaceutical Industries Ltd., is a corporation organized, existing and doing business under and by virtue of the laws of Republic of India, with its headquarters address at Acme Plaza, Andheri Kurla Road, Andheri (East), Mumbai 400 059 India, and the address of the registered office of its United States subsidiary, Sun Pharmaceutical Industries Inc., at 29714 Orion Court, Farmington Hills, Michigan 48334-4144.

2. Taro Pharmaceutical Industries Ltd. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Israel, with its headquarters address at Italy House, Euro Park, Yakum 60972, Israel, and the address of the principal place of business of its United States subsidiary, Taro Pharmaceuticals U.S.A., Inc., at 3 Skyline Drive, Hawthorne, New York 10532.

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

## Order to Maintain Assets

**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, the Decision and Order), which are incorporated herein by reference and made a part hereof, shall apply:

- A. “Sun” or “Respondent” means Sun Pharmaceutical Industries Ltd., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Sun (including, but not limited to, Alkaloida Chemical Company Exclusive Group Ltd. and Aditya Acquisition Company Ltd.) and the respective directors, officers, employees, agents, representatives, predecessors, successors, and assigns of each. After the Acquisition, Sun shall include Taro.
- B. “Taro” means Taro Pharmaceutical Industries Ltd., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Taro (including, but not limited to, Taro Pharmaceuticals U.S.A., Inc.), and the respective directors, officers, employees, agents, representatives, predecessors, successors, and assigns of each.
- C. “Commission” means the Federal Trade Commission.
- D. “Decision and Order” means the:
  - 1. Proposed Decision and Order contained in the Consent Agreement in this matter until the issuance of a final Decision and Order by the Commission; and

## Order to Maintain Assets

2. Final Decision and Order issued by the Commission following the issuance and service of a final Decision and Order by the Commission in this matter.
- E. “Divestiture Assets” means the Carbamazepine Product Assets, as defined in the Decision and Order.
- F. “Divestiture Product Business(es)” means the Respondent’s business within the Geographic Territory specified in the Decision and Order related to each of the Divestiture Products, including the research, Development, manufacture, distribution, marketing, and sale of each Divestiture Product and the assets related to such business, including, but not limited to, the Divestiture Assets.
- G. “Interim Monitor” means any monitor appointed pursuant to Paragraph III of this Order to Maintain Assets.
- H. “Orders” means the Decision and Order and this Order to Maintain Assets.

**II.**

**IT IS FURTHER ORDERED** that from the date this Order to Maintain Assets becomes final:

- A. Until Respondent fully transfers the Divestiture Assets to the Acquirer, Respondent shall take such actions as are necessary to maintain the full economic viability, marketability and competitiveness of the Divestiture Product Business, to minimize any risk of loss of competitive potential for the Divestiture Product Business, and to prevent the destruction, removal, wasting, deterioration, or impairment of the Divestiture Product Business except for ordinary wear and tear. Respondent shall not sell, transfer, encumber or otherwise impair the Divestiture Assets (other than in the manner prescribed in the Decision and Order) nor take any action that lessens

## Order to Maintain Assets

the full economic viability, marketability or competitiveness of the Divestiture Product Business.

- B. Until Respondent fully transfers the Divestiture Assets to the Acquirer, Respondent shall maintain the operations of the Divestiture Product Business 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 marketability, viability, and competitiveness of the Divestiture Product Business and shall use its best efforts to preserve the existing relationships with the following: suppliers; vendors and distributors, including, but not limited to, the High Volume Accounts; customers; Agencies; employees; and others having business relations with the Divestiture Product Business. Respondent's responsibilities shall include, but are not limited to, the following:
1. providing the Divestiture Product Business 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 the Divestiture Product Business;
  2. continuing, at least at their scheduled pace, any additional expenditures for the Divestiture Product Business authorized prior to the date the Consent Agreement was signed by Respondent including, but not limited to, all research, Development, manufacture, distribution, marketing and sales expenditures;
  3. provide such resources as may be necessary to respond to competition against the Divestiture Products and/or to prevent any diminution in sales of the Divestiture Products during and after the Acquisition process and prior to divestiture of the related Divestiture Assets;

## Order to Maintain Assets

4. provide such resources as may be necessary to maintain the competitive strength and positioning of the Divestiture Products at the High Volume Accounts;
  5. making available for use by the Divestiture Product Business funds sufficient to perform all routine maintenance and all other maintenance as may be necessary to, and all replacements of, the assets related to such business, including the Divestiture Assets;
  6. providing the Divestiture Product Business with such funds as are necessary to maintain the full economic viability, marketability and competitiveness of the Divestiture Product Business; and
  7. providing such support services to the Divestiture Product Business as were being provided to this business by Respondent as of the date the Consent Agreement was signed by Respondent.
- I. Until Respondent fully transfers the Divestiture Assets to the Acquirer, Respondent shall maintain a work force at least as equivalent in size, training, and expertise to what has been associated with the Divestiture Products for the relevant Divestiture Product's last fiscal year.
  - J. Until the Closing Date for the Divestiture Assets, Respondent shall provide all the related Divestiture Core Employees with reasonable financial incentives to continue in their positions and to research, Develop, and manufacture the relevant Divestiture Products consistent with past practices and/or as may be necessary to preserve the marketability, viability and competitiveness of such Divestiture Products pending divestiture. Such incentives shall include a continuation of all employee benefits offered by Respondent until the Closing Date for the divestiture of the Divestiture Assets has occurred, including regularly scheduled raises, bonuses, vesting of pension benefits (as permitted by Law), and additional



## Order to Maintain Assets

incentives as may be necessary to prevent any diminution of the relevant Divestiture Product's competitiveness.

## K. Respondent shall:

1. for a period of at least six (6) months from the relevant Closing Date or upon the hiring of ten (10) Divestiture Product Core Employees by the Acquirer whichever occurs earlier, provide the relevant Acquirer with the opportunity to enter into employment contracts with the Divestiture Product Core Employees related to the Divestiture Products and assets acquired by such Acquirer. Each of these periods is hereinafter referred to as the "Divestiture Product Employee Access Period(s)"; and
2. not later than the earlier of the following dates: (1) ten (10) days after notice by staff of the Commission to Respondent to provide the Product Employee Information; or (2) ten (10) days after the relevant Closing Date, provide the relevant Acquirer or the relevant Proposed Acquirer with the Product Employee Information related to the relevant Divestiture Product Core Employees. Failure by Respondent to provide the Product Employee Information for any Divestiture Product Core Employee within the time provided herein shall extend the Divestiture Product Employee Access Period(s) with respect to that employee in an amount equal to the delay;
3. during the Divestiture Product Employee Access Period, not interfere with the hiring or employing by the relevant Acquirer of Divestiture Product Core Employees, and shall remove any impediments within the control of Respondent that may deter these employees from accepting employment with such Acquirer, including, but not limited to, any noncompete provisions of employment or other

## Order to Maintain Assets

contracts with Respondent that would affect the ability or incentive of those individuals to be employed by such Acquirer. In addition, Respondent shall not make any counteroffer to a Divestiture Product Core Employee who receives a written offer of employment from the relevant Acquirer;

*provided, however,* Respondent may continue to employ such a Divestiture Product Core Employee (subject to the conditions of continued employment prescribed in this Order) under the terms of such employee's employment as of the Effective Date.

- L. Pending divestiture of the relevant Divestiture Assets, Respondent shall:
1. not use, directly or indirectly, any such Confidential Business Information related to the research, Development, manufacturing, marketing, or sale of the relevant Divestiture Product(s) other than as necessary to comply with the following: (1) the requirements of the Orders; (2) Respondent's obligations to the Acquirer under the terms of any Remedial Agreement related to relevant Divestiture Product(s); or (3) applicable Law;
  2. not disclose or convey any such Confidential Business Information, directly or indirectly, to any person except the relevant Acquirer or persons specifically authorized by the relevant Acquirer to receive such information; and
  3. not provide, disclose or otherwise make available, directly or indirectly, any such Confidential Business Information related to the marketing or sales of the relevant Divestiture Products to the employees associated with business related to those Retained Products that contain the same active pharmaceutical ingredient as the Divestiture Products.

## Order to Maintain Assets

4. 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 it is prohibited under this Order to Maintain Assets from receiving for any reason or purpose.
- M. Not later than thirty (30) days following the Closing Date, Respondent shall provide to all of Respondent's employees and other personnel who may have access to Confidential Business Information related to the Divestiture Products written or electronic notification of the restrictions on the use of such information by Respondent's personnel. At the same time, if not provided earlier, Respondent shall provide a copy of such notification by e-mail with return receipt requested or similar transmission, and keep an electronic file of such receipts for one (1) year after the Closing Date. Respondent shall provide a copy of the form of such notification to the Acquirer, the Interim Monitor(s), and the Commission. Respondent shall also obtain from each employee covered by this Paragraph II.G. an agreement to abide by the applicable restrictions. Respondent shall maintain complete records of all such agreements at Respondent's registered office within the United States and shall provide an officer's certification to the Commission stating that such acknowledgment program has been implemented and is being complied with. Respondent shall monitor the implementation by its employees and other personnel of all applicable restrictions, and take corrective actions for the failure of such employees and personnel to comply with such restrictions or to furnish the written agreements and

## Order to Maintain Assets

acknowledgments required by this Order to Maintain Assets. Respondent shall provide the Acquirer with copies of all certifications, notifications and reminders sent to Respondent's employees and other personnel.

- N. Respondent shall adhere to and abide by the Remedial Agreements (which agreements shall not vary or contradict, or be construed to vary or contradict, the terms of the Orders, it being understood that nothing in the Orders shall be construed to reduce any obligations of Respondent under such agreement(s)), which are incorporated by reference into this Order to Maintain Assets and made a part hereof.
- O. The purpose of this Order to Maintain Assets is to maintain the full economic viability, marketability and competitiveness of the Divestiture Product Business within the Geographic Territory through its full transfer to the Acquirer, to minimize any risk of loss of competitive potential for the Divestiture Product Business within the Geographic Territory, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Divestiture Assets except for ordinary wear and tear.

**III.**

**IT IS FURTHER ORDERED** that:

- A. At any time after Respondent signs the Consent Agreement in this matter, the Commission may appoint an Interim Monitor to assure that Respondent expeditiously complies with all of its obligations and perform all of its responsibilities as required by the Orders and the Remedial Agreements. The Commission may appoint one or more Interim Monitors to assure Respondent's compliance with the requirements of the Orders, and the related Remedial Agreements.

## Order to Maintain Assets

- B. The Commission shall select the Interim Monitor, subject to the consent of Respondent, which consent shall not be unreasonably withheld. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of a proposed Interim Monitor within ten (10) days after notice by the staff of the Commission to Respondent of the identity of any proposed Interim Monitor, Respondent shall be deemed to have consented to the selection of the proposed Interim Monitor.
- C. Not later than ten (10) days after the appointment of the Interim Monitor, Respondent shall execute an agreement that, subject to the prior approval of the Commission, confers on the Interim Monitor all the rights and powers necessary to permit the Interim Monitor to monitor Respondent's compliance with the relevant requirements of the Orders in a manner consistent with the purposes of the Orders.
- D. If one or more Interim Monitors are appointed pursuant to this Paragraph or pursuant to the relevant provisions of the Decision and Order in this matter, Respondent shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of each Interim Monitor:
1. The Interim Monitor shall have the power and authority to monitor Respondent's compliance with the divestiture and asset maintenance obligations and related requirements of the Orders, and shall exercise such power and authority and carry out the duties and responsibilities of the Interim Monitor in a manner consistent with the purposes of the Orders and in consultation with the Commission;
  2. The Interim Monitor shall act in a fiduciary capacity for the benefit of the Commission;
  3. The Interim Monitor shall serve until the later of:

## Order to Maintain Assets

- a. the completion by Respondent of:
  - (1) the divestiture of all Divestiture Assets in a manner that fully satisfies the requirements of this Order; and
  - (2) notification by the Acquirer to the Interim Monitor that the Acquirer is: (1) approved by the FDA to manufacture each of the relevant Divestiture Products, and (2) able to manufacture such Divestiture Products in commercial quantities, in a manner consistent with cGMP, independently of Respondent and Taro; and
- b. the completion by Respondent of the last obligation under the Orders pertaining to the Interim Monitor's service;

*provided, however,* that the Commission may extend or modify this period as may be necessary or appropriate to accomplish the purposes of this Order to Maintain Assets;

*provided, further,* that, with respect to each Divestiture Product, the Interim Monitor's service shall not exceed five (5) years from the Closing Date on the Remedial Agreement to Contract Manufacture such Divestiture Product.

- E. Subject to any demonstrated legally recognized privilege, the Interim Monitor shall have full and complete access to Respondent's personnel, books, documents, records kept in the normal course of business, facilities and technical information, and such other relevant information as the Interim Monitor may reasonably request, related to Respondent's compliance with its obligations under the Orders, including, but not limited to, its obligations related to the relevant assets. Respondent shall cooperate with any reasonable request of the Interim Monitor and shall

## Order to Maintain Assets

take no action to interfere with or impede the Interim Monitor's ability to monitor Respondent's compliance with the Orders.

- F. The Interim Monitor shall serve, without bond or other security, at the expense of Respondent on such reasonable and customary terms and conditions as the Commission may set. The Interim Monitor shall have authority to employ, at the expense of Respondent, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Interim Monitor's duties and responsibilities.
- G. Respondent shall indemnify the Interim Monitor and hold the Interim Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Interim Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Interim Monitor.
- H. Respondent shall report to the Interim Monitor in accordance with the requirements of this Order to Maintain Assets and/or as otherwise provided in any agreement approved by the Commission. The Interim Monitor shall evaluate the reports submitted to the Interim Monitor by Respondent, and any reports submitted by the Acquirer with respect to the performance of Respondent's obligations under the Orders or the Remedial Agreement. Within one (1) month from the date the Interim Monitor receives these reports, the Interim Monitor shall report in writing to the Commission concerning performance by Respondent of its obligations under the Orders; *provided, however*, beginning one hundred twenty (120) days after Respondent has filed its final report pursuant to Paragraph

## Order to Maintain Assets

VI.B. of the Decision and Order, and every one hundred twenty (120) days thereafter, the Interim Monitor shall report in writing to the Commission concerning progress by the Acquirer 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 Respondent and Taro.

- I. Respondent may require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement;

*provided, however,* that such agreement shall not restrict the Interim Monitor from providing any information to the Commission.

- J. The Commission may, among other things, require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Interim Monitor's duties.
- K. If the Commission determines that the Interim Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Interim Monitor in the same manner as provided in this Paragraph or the relevant provisions of the Decision and Order in this matter.
- L. The Commission may on its own initiative, or at the request of the Interim Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Orders.
- M. The Interim Monitor appointed pursuant to this Order to Maintain Assets or the relevant provisions of the Decision



## Order to Maintain Assets

and Order in this matter 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 becomes final, and every thirty (30) days thereafter until Respondent has fully complied with its obligations to assign, grant, license, divest, transfer, deliver or otherwise convey relevant assets as required by Paragraph II.A., and II.B., of the related Decision and Order in this matter, Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order to Maintain Assets and the related Decision and Order; *provided, however,* that, after the Decision and Order in this matter becomes final, the reports due under this Order to Maintain Assets may be consolidated with, and submitted to the Commission at the same time as, the reports required to be submitted by Respondent pursuant to Paragraph VI of the Decision and Order.

**V.**

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

- A. any proposed dissolution of Respondent;
- B. any proposed acquisition, merger or consolidation of Respondent; or
- C. any other change in 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 Order.

## Order to Maintain Assets

**VI.**

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

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

**VII.**

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

- A. Three (3) days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
- B. The latter of:
  - 1. The day after the divestiture of all of the Divestiture Assets, as required by and described in the Decision and Order, has been completed and each Interim Monitor, in consultation with Commission staff and

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the Acquirer(s), notifies the Commission that all assignments, conveyances, deliveries, grants, licenses, transactions, transfers and other transitions related to such divestitures are complete, or the Commission otherwise directs that this Order to Maintain Assets is terminated; or

2. the day the related Decision and Order becomes final.

By the Commission.

**DECISION AND ORDER**

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by Respondent Sun Pharmaceutical Industries Ltd. (“Sun”) of Taro Pharmaceutical Industries Ltd. (“Taro”), and Respondent having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and that, if issued by the Commission, would charge Respondent with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such Complaint, or that the facts as alleged in such

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Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

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

1. Respondent Sun Pharmaceutical Industries Ltd., is a corporation organized, existing and doing business under and by virtue of the laws of Republic of India, with its headquarters address at Acme Plaza, Andheri Kurla Road, Andheri (East), Mumbai 400 059 India, and the address of the registered office of its United States subsidiary, Sun Pharmaceutical Industries Inc., at 29714 Orion Court, Farmington Hills, Michigan 48334-4144.

2. Taro Pharmaceutical Industries Ltd. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Israel, with its headquarters address at Italy House, Euro Park, Yakum 60972, Israel, and the address of the principal place of business of its United States subsidiary, Taro Pharmaceuticals U.S.A., Inc., at 3 Skyline Drive, Hawthorne, New York 10532.

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

## Decision and Order

**ORDER****I.**

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

- A. “Sun” or “Respondent” means Sun Pharmaceutical Industries Ltd., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Sun (including, but not limited to, Alkaloida Chemical Company Exclusive Group Ltd. and Aditya Acquisition Company Ltd.) and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. After the Acquisition, Sun shall include Taro.
- B. “Taro” means Taro Pharmaceutical Industries Ltd., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Taro (including, but not limited to, Taro Pharmaceuticals U.S.A., Inc.), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Commission” means the Federal Trade Commission.
- D. “Acquirer” means the following:
  - 1. an entity specified by name in this Order to acquire particular assets or rights that Respondent is required to assign, grant, license, divest, transfer, deliver, or otherwise convey pursuant to this Order and that has been approved by the Commission to accomplish the requirements of this Order in connection with the

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Commission's determination to make this Order final;  
or

2. an entity approved by the Commission to acquire particular assets or rights that Respondent is required to assign, grant, license, divest, transfer, deliver, or otherwise convey pursuant to this Order.
- E. "Acquisition" means Respondent Sun's acquisition of shares representing fifty percent (50%) or more of the voting rights in Taro.
- F. "Agency(ies)" means any government regulatory authority or authorities in the world responsible for granting approval(s), clearance(s), qualification(s), license(s), or permit(s) for any aspect of the research, Development, manufacture, marketing, distribution, or sale of a Product. The term "Agency" includes, without limitation, the United States Food and Drug Administration ("FDA").
- G. "Application(s)" means all of the following: "New Drug Application" ("NDA"), "Abbreviated New Drug Application" ("ANDA"), "Supplemental New Drug Application" ("SNDAs"), or "Marketing Authorization Application" ("MAA"), the applications for a Product filed or to be filed with the FDA pursuant to 21 C.F.R. Part 314, and all supplements, amendments, and revisions thereto, any preparatory work, drafts and data necessary for the preparation thereof, and all correspondence between Respondent and the FDA related thereto. The term "Application" also includes an "Investigational New Drug Application" ("IND") for a Product filed or to be filed with the FDA pursuant to 21 C.F.R. Part 312, and all supplements, amendments, and revisions thereto, any preparatory work, drafts and data necessary for the preparation thereof, and all correspondence between Respondent and the FDA related thereto.

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- H. “Carbamazepine Products” means all of the following: all Products in Development, manufactured, marketed or sold by Respondent Sun pursuant to the following of Respondent Sun’s ANDAs:
1. Carbamazepine 100 mg chewable tablet, pursuant to ANDA No. 75-712;
  2. Carbamazepine 200 mg IR tablet, pursuant to ANDA No. 77-272;
  3. Carbamazepine 100 mg ER tablet, pursuant to ANDA No. 78-268;
  4. Carbamazepine 200 mg ER tablet, pursuant to ANDA No. 78-268;
  5. Carbamazepine 400 mg ER tablet, pursuant to ANDA No. 78-268; and
  6. any supplements, amendments, or revisions thereto; *provided, however,* that for the purposes of the Contract Manufacture provisions of this Order, the term “Carbamazepine Products” shall include all presentations of any Retained Product that, as of the Effective Date, are being, or will be, manufactured, marketed or sold by Sun or Taro for sale within the United States that contain the active pharmaceutical ingredient carbamazepine in the dosages strengths and presentations specified above.
- I. “Carbamazepine Product Assets” means all of Respondent Sun’s rights, title and interest in and to all assets related to Respondent Sun’s business within the Geographic Territory related to the Carbamazepine Products to the extent legally transferable, including the research, Development, manufacture, distribution, marketing, and

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sale of the Carbamazepine Products, including, without limitation, the Categorized Assets related to the Carbamazepine Products.

- J. “Categorized Assets” means the following assets related to the specified Divestiture Product(s):
1. all Product Intellectual Property related to such Divestiture Product(s);
  2. perpetual, non-exclusive, fully paid-up and royalty-free license(s) with rights to sublicense to all Product Licensed Intellectual Property to use, make, distribute, offer for sale, promote, advertise, sell, import, export, or have used, made, distributed, offered for sale, promoted, advertised, sold, imported, or exported the Divestiture Product(s) within the specified Geographic Territory;
  3. all Product Approvals related to such Divestiture Product(s);
  4. all Product Manufacturing Technology related to such Divestiture Product(s);
  5. all Product Marketing Materials related to such Divestiture Product(s);
  6. all Website(s) related to such Divestiture Product(s);
  7. a list of all of the NDC Numbers related to such Divestiture Product(s), and rights, to the extent permitted by Law:
    - a. to require Respondent to discontinue the use of those NDC Numbers in the sale or marketing of Products other than with respect to returns, rebates,



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allowances, and adjustments for Divestiture Products sold prior to the Effective Date;

- b. to prohibit Respondent from seeking from any customer any type of cross-referencing of those NDC Numbers with any Retained Product(s);
  - c. to seek to change any cross-referencing by a customer of those NDC Numbers with the Retained Product(s) (including the right to receive notification from Respondent of any such cross-referencing that is discovered by Respondent);
  - d. to seek cross-referencing from a customer of those NDC Numbers with the Acquirer's NDC Numbers related to the Divestiture Product(s);
  - e. to approve the timing of Respondent's discontinued use of those NDC Numbers in the sale or marketing of Products other than with respect to returns, rebates, allowances, and adjustments for Divestiture Products sold prior to the Effective Date;
  - f. to approve any notification(s) from Respondent to any customer(s) regarding the use or discontinued use of such numbers by Respondent prior to such notification(s) being disseminated to the customer(s);
8. all rights to all of Respondent's Applications related to such Divestiture Product(s);
  9. Right of Reference or Use to the Drug Master Files related to the above-described Applications including, but not limited to, the pharmacology and toxicology data contained in all Application(s);

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10. all Product Development Reports related to such Divestiture Product(s);
11. at the Acquirer's option, all Product Assumed Contracts related to such Divestiture Product(s) (copies to be provided to the Acquirer on or before the Closing Date);
12. all strategic safety program(s) submitted to the FDA related to such Divestiture Product(s) that is designed to decrease product risk by using one or more interventions or tools beyond the package insert;
13. all patient registries related to such Divestiture Product(s), and any other systematic active post-marketing surveillance program to collect patient data, laboratory data and identification information required to be maintained by the FDA to facilitate the investigation of adverse effects related to such Divestiture Product(s);
14. a list of all customers and/or targeted customers for such Divestiture Product(s) and the net sales (in either units or dollars) of such Divestiture Products to such customers on either an annual, quarterly, or monthly basis including, but not limited to, a separate list specifying the above-described information for the High Volume Accounts and including the name of the employee(s) for each High Volume Account that is or has been responsible for the purchase of such Divestiture Products on behalf of the High Volume Account and his or her business contact information;
15. at the Acquirer's option and to the extent approved by the Commission in the relevant Remedial Agreement, all inventory in existence as of the Closing Date including, but not limited to, raw materials, packaging

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materials, work-in-process and finished goods related to such Divestiture Product(s);

16. copies of all unfilled customer purchase orders for such Divestiture Product(s) as of the Closing Date, to be provided to the Acquirer not later than five (5) days after the Closing Date;
17. at the Acquirer's option, subject to any rights of the customer, all unfilled customer purchase orders for such Divestiture Products; and
18. all of the Respondent's books, records, and files directly related to the foregoing or to such Divestiture Product(s);

*provided, however,* that "Categorized Assets" shall not include: (1) documents relating to Respondent's general business strategies or practices relating to research, Development, manufacture, marketing or sales of generic pharmaceutical Products, where such documents do not discuss with particularity the Divestiture Products; (2) shall not include administrative, financial, and accounting records; (3) quality control records that are determined by the Interim Monitor or the Acquirer not to be material to the manufacture of the Divestiture Product(s); and (4) any real estate and the buildings and other permanent structures located on such real estate;

*provided further,* that in cases in which documents or other materials included in the relevant assets to be divested contain information: (1) that relates both to such Divestiture Product(s) and to other Products or businesses of the Respondent and cannot be segregated in a manner that preserves the usefulness of the information as it relates to such Divestiture Product(s); or (2) for which the Respondent has a legal obligation to retain the original copies, the Respondent shall be required to provide only

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copies or relevant excerpts of the documents and materials containing this information. In instances where such copies are provided to the Acquirer, the Respondent shall provide such Acquirer access to original documents under circumstances where copies of documents are insufficient for evidentiary or regulatory purposes. The purpose of this proviso is to ensure that Respondent provides the Acquirer with the above-described information without requiring Respondent completely to divest itself of information that, in content, also relates to Retained Product(s).

- K. “cGMP” means current Good Manufacturing Practice as set forth in the United States Federal, Food, Drug, and Cosmetic Act, as amended, and includes all rules and regulations promulgated by the FDA thereunder.
- L. “Closing Date” means, as to each Divestiture Product, the date on which Respondent (or a Divestiture Trustee) consummates a transaction to assign, grant, license, divest, transfer, deliver, or otherwise convey assets related to such Divestiture Product to an Acquirer pursuant to this Order.
- M. “Confidential Business Information” means all information owned by, or in the possession or control of, Respondent that is not in the public domain and that is directly related to the research, Development, manufacture, marketing, commercialization, importation, exportation, cost, supply, sales, sales support, or use of the Divestiture Product(s); *provided however*, that the restrictions contained in this Order regarding the use, conveyance, provision, or disclosure of “Confidential Business Information” shall not apply to the following:
  - 1. information that subsequently falls within the public domain through no violation of this Order or breach of confidentiality or non-disclosure agreement with respect to such information by Respondent;

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2. information related to the Carbamazepine Products that Taro can demonstrate it obtained without the assistance of Respondent Sun prior to the Acquisition;
  3. information that is required by Law to be publicly disclosed;
  4. information that does not directly relate to the Divestiture Products;
  5. information relating to Respondent's general business strategies or practices relating to research, Development, manufacture, marketing or sales of generic pharmaceutical Products that does not discuss with particularity the Divestiture Products; or
  6. information specifically excluded from the Categorized Assets.
- N. "Contract Manufacture" means the manufacture of a Divestiture Product to be supplied by Respondent, Taro, or a Designee to an Acquirer.
- O. "Designee" means any entity other than Respondent or Taro that will manufacture a Divestiture Product for an Acquirer.
- P. "Development" means all preclinical and clinical drug development activities (including formulation), including test method development and stability testing, toxicology, formulation, process development, manufacturing scale-up, development-stage manufacturing, quality assurance/quality control development, statistical analysis and report writing, conducting clinical trials for the purpose of obtaining any and all approvals, licenses, registrations or authorizations from any Agency necessary for the manufacture, use, storage, import, export, transport, promotion, marketing, and sale of a Product (including

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any government price or reimbursement approvals), Product approval and registration, and regulatory affairs related to the foregoing. “Develop” means to engage in Development.

- Q. “Direct Cost” means a cost not to exceed the cost of labor, material, travel and other expenditures to the extent the costs are directly incurred to provide the relevant assistance or service. “Direct Cost” to the Acquirer for its use of any of Respondent’s employees’ labor shall not exceed the average hourly wage rate for such employee; *provided, however*, in each instance where: (1) an agreement to divest relevant assets is specifically referenced and attached to this Order, and (2) such agreement becomes a Remedial Agreement for a Divestiture Product, “Direct Cost” means such cost as is provided in such Remedial Agreement for that Divestiture Product.
- R. “Divestiture Product(s)” means the following Products: the Carbamazepine Products.
- S. “Divestiture Product Core Employees” means the Product Research and Development Employees and the Product Manufacturing Employees related to each Divestiture Product.
- T. “Divestiture Product Releasee(s)” means the Acquirer for the assets related to a particular Divestiture Product or any entity controlled by or under common control with such Acquirer, or any licensees, sublicensees, manufacturers, suppliers, distributors, and customers of such Acquirer, or of such Acquirer-affiliated entities.
- U. “Divestiture Trustee” means the trustee appointed by the Commission pursuant to the relevant provisions of this Order.

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- V. “Domain Name” means the domain name(s) (universal resource locators), and registration(s) thereof, issued by any entity or authority that issues and maintains the domain name registration. “Domain Name” shall not include any trademark or service mark rights to such domain names other than the rights to the Product Trademarks required to be divested.
- W. “Drug Master Files” means the information submitted to the FDA as described in 21 C.F.R. Part 314.420 related to a Product.
- X. “Effective Date” means the date on which the Acquisition occurs.
- Y. “Generic Divestiture Product Agreement(s)” means the following agreements:
1. “Asset Purchase Agreement” between Sun Pharmaceutical Industries, Ltd., Caraco Pharmaceutical Laboratories, Ltd., and Torrent Pharmaceutical Ltd., Torrent Pharma, Inc, dated as of July 11, 2008, and all amendments, exhibits, attachments, agreements, and schedules thereto;
  2. “Supply Agreement” between Sun Pharmaceutical Industries, Ltd., Caraco Pharmaceutical Laboratories, Ltd., and Torrent Pharmaceutical Ltd., Torrent Pharma, Inc dated as of July 11, 2008, and all amendments, exhibits, attachments, agreements, and schedules thereto;
  3. “Quality Agreement” between Sun Pharmaceutical Industries, Ltd., Caraco Pharmaceutical Laboratories, Ltd., and Torrent Pharmaceutical Ltd., Torrent Pharma, Inc dated as of July 11, 2008, and all amendments, exhibits, attachments, agreements, and schedules thereto; and

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related to the Carbamazepine Product Assets that have been approved by the Commission to accomplish the requirements of this Order. The Generic Divestiture Product Agreements are attached to this Order and contained in non-public Appendix II.A.

- Z. “Geographic Territory” shall mean the United States of America (including all of the territories within its jurisdiction or control) unless otherwise specified.
- AA. “Government Entity” means any Federal, state, local or non-U.S. government, or any court, legislature, government agency, or government commission, or any judicial or regulatory authority of any government.
- BB. “High Volume Account(s)” means any retailer, wholesaler or distributor whose annual and/or projected annual aggregate purchase amounts (on a company-wide level), in units or in dollars, of a Divestiture Product in the United States from the Respondent was, is, or is projected to be among the top twenty highest of such purchase amounts by the Respondent’s U.S. customers on any of the following dates: (1) the end of the last quarter that immediately preceded the date of the public announcement of the proposed Acquisition; (2) the end of the last quarter that immediately preceded the Effective Date; (3) the end of the last quarter that immediately preceded the Closing Date for the relevant assets; or (4) the end of the last quarter following the Acquisition and/or the Closing Date.
- CC. “Interim Monitor” means any monitor appointed pursuant to Paragraph III of this Order or Paragraph III of the related Order to Maintain Assets.



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- DD. “Law” means all laws, statutes, rules, regulations, ordinances, and other pronouncements by any Government Entity having the effect of law.
- EE. “NDC Numbers” means the National Drug Code number(s), including both the labeler code assigned by the FDA and the additional numbers assigned by the Application holder as a product code for a specific Product.
- FF. “Order to Maintain Assets” means the Order to Maintain Assets incorporated into and made a part of the Agreement Containing Consent Orders.
- GG. “Patents” means all patents, patent applications, including provisional patent applications, invention disclosures, certificates of invention and applications for certificates of invention and statutory invention registrations, in each case existing as of the Closing Date (*except* where this Order specifies a different time), and includes all reissues, additions, divisions, continuations, continuations-in-part, supplementary protection certificates, extensions and reexaminations thereof, all inventions disclosed therein, and all rights therein provided by international treaties and conventions, related to any Product of or owned by Respondent as of the Closing Date (*except* where this Order specifies a different time).
- HH. “Person” means any individual, partnership, joint venture, firm, corporation, association, trust, unincorporated organization, joint venture, or other business or Government Entity, and any subsidiaries, divisions, groups or affiliates thereof.
- II. “Product” means any pharmaceutical, biological, or genetic composition containing any formulation or dosage of a compound referenced as its pharmaceutically, biologically, or genetically active ingredient.

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- JJ. “Product Approval(s)” means any approvals, registrations, permits, licenses, consents, authorizations, and other approvals, and pending applications and requests therefor, required by applicable Agencies related to the research, Development, manufacture, distribution, finishing, packaging, marketing, sale, storage or transport of the Product within the United States of America, and includes, without limitation, all approvals, registrations, licenses or authorizations granted in connection with any Application.
- KK. “Product Assumed Contracts” means all of the following contracts or agreements (copies of each such contract to be provided to the Acquirer on or before the Closing Date and segregated in a manner that clearly identifies the purpose(s) of each such contract):
1. that make specific reference to the Divestiture Product(s) and pursuant to which any Third Party is obligated to purchase, or has the option to purchase without further negotiation of terms, the Divestiture Product(s) from the Respondent unless such contract applies generally to the Respondent’s sales of Products to that Third Party;
  2. pursuant to which Respondent purchases the active pharmaceutical ingredient(s) or other necessary ingredient(s) or had planned to purchase the active pharmaceutical ingredient(s) or other necessary ingredient(s) from any Third Party for use in connection with the manufacture of the Divestiture Product(s);
  3. relating to any clinical trials involving the Divestiture Product(s);

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4. with universities or other research institutions for the use of the Divestiture Product(s) in scientific research;
5. relating to the particularized marketing of the Divestiture Product(s) or educational matters relating solely to the Divestiture Product(s);
6. pursuant to which a Third Party manufactures or packages the Divestiture Product(s) on behalf of Respondent;
7. pursuant to which a Third Party provides the Product Manufacturing Technology related to the Divestiture Product(s) to Respondent;
8. pursuant to which a Third Party is licensed by Respondent to use the Product Manufacturing Technology;
9. constituting confidentiality agreements involving the Divestiture Product(s);
10. involving any royalty, licensing, or similar arrangement involving the Divestiture Product(s);
11. pursuant to which a Third Party provides any specialized services necessary to the research, Development, manufacture or distribution of the Divestiture Products to Respondent including, but not limited to, consultation arrangements; and/or
12. pursuant to which any Third Party collaborates with Respondent in the performance of research, Development, marketing, distribution or selling of the Divestiture Product(s) or the Divestiture Product(s) business;

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*provided, however*, that where any such contract or agreement also relates to a Retained Product(s), Respondent shall assign the Acquirer all such rights under the contract or agreement as are related to the Divestiture Product(s), but concurrently may retain similar rights for the purposes of the Retained Product(s).

LL. "Product Copyrights" means rights to all original works of authorship of any kind directly related to the Divestiture Product(s) and any registrations and applications for registrations thereof within the Geographic Territory, including, but not limited to, the following: all such rights with respect to all promotional materials for healthcare providers, all promotional materials for patients, and educational materials for the sales force; copyrights in all preclinical, clinical and process development data and reports relating to the research and Development of the Divestiture Product(s) or of any materials used in the research, Development, manufacture, marketing or sale of the Divestiture Product(s), including all copyrights in raw data relating to clinical trials of the Divestiture Product(s), all case report forms relating thereto and all statistical programs developed (or modified in a manner material to the use or function thereof (other than through user references)) to analyze clinical data, all market research data, market intelligence reports and statistical programs (if any) used for marketing and sales research; all copyrights in customer information, promotional and marketing materials, the Divestiture Product(s) sales forecasting models, medical education materials, sales training materials, and advertising and display materials; all records relating to employees who accept employment with the Acquirer (excluding any personnel records the transfer of which is prohibited by applicable Law); all copyrights in records, including customer lists, sales force call activity reports, vendor lists, sales data,

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reimbursement data, speaker lists, manufacturing records, manufacturing processes, and supplier lists; all copyrights in data contained in laboratory notebooks relating to the Divestiture Product(s) or relating to its biology; all copyrights in adverse experience reports and files related thereto (including source documentation) and all copyrights in periodic adverse experience reports and all data contained in electronic databases relating to adverse experience reports and periodic adverse experience reports; all copyrights in analytical and quality control data; and all correspondence with the FDA.

MM. “Product Development Reports” means:

1. Pharmacokinetic study reports related to the specified Divestiture Product(s);
2. Bioavailability study reports (including reference listed drug information) related to the specified Divestiture Product(s);
3. Bioequivalence study reports (including reference listed drug information) related to the specified Divestiture Product(s);
4. all correspondence to the Respondent from the FDA and from the Respondent to the FDA relating to the Application(s) submitted by, on behalf of, or acquired by, the Respondent related to the specified Divestiture Product;
5. annual and periodic reports related to the above-described Application(s), including any safety update reports;
6. FDA approved Product labeling related to the specified Divestiture Product(s);

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7. currently used product package inserts (including historical change of controls summaries) related to the specified Divestiture Product(s);
  8. FDA approved patient circulars and information related to the specified Divestiture Product(s);
  9. adverse event/serious adverse event summaries related to the specified Divestiture Product(s);
  10. summary of Product complaints from physicians related to the specified Divestiture Product(s);
  11. summary of Product complaints from customers related to the specified Divestiture Product(s); and
  12. Product recall reports filed with the FDA related to the specified Divestiture Product(s).
- NN. "Product Employee Information" means the following, for each Divestiture Product Core Employee, as and to the extent permitted by the Law:
1. a complete and accurate list containing the name of each relevant employee (including former employees who were employed by Respondent within ninety (90) days of the execution date of any Remedial Agreement);
  2. with respect to each such employee, the following information:
    - a. the date of hire and effective service date;
    - b. job title or position held;

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- c. a specific description of the employee's responsibilities related to the relevant Divestiture Product; *provided, however*, in lieu of this description, Respondent may provide the employee's most recent performance appraisal;
  - d. the base salary or current wages;
  - e. the most recent bonus paid, aggregate annual compensation for Respondent's last fiscal year and current target or guaranteed bonus, if any;
  - f. employment status (*i.e.*, active or on leave or disability; full-time or part-time); and
  - g. any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly situated employees; and
3. at the Acquirer's option or the Proposed Acquirer's option (as applicable), copies of all employee benefit plans and summary plan descriptions (if any) applicable to the relevant employees.
- OO. "Product Intellectual Property" means all of the following related to a Divestiture Product (other than Product Licensed Intellectual Property):
1. Patents;
  2. Product Copyrights;
  3. Product Trademarks, Product Trade Dress, trade secrets, know-how, techniques, data, inventions, practices, methods, and other confidential or proprietary technical, business, research, Development and other information; and

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

*provided, however*, “Product Intellectual Property” does not include the corporate names or corporate trade dress of “Sun” or “Taro”, or the corporate names or corporate trade dress of any other corporations or companies owned or controlled by Respondent or Taro or the related logos thereof.

PP. “Product Licensed Intellectual Property” means the following:

1. Patents that are related to a Divestiture Product that Respondent can demonstrate have been routinely used, prior to the Effective Date, for a Retained Product(s) that:
  - a. has been marketed or sold on an extensive basis by the Respondent within the two-year period immediately preceding the Acquisition; or
  - b. for which, prior to the announcement of the Acquisition, there was an approved marketing plan to market or sell such a Retained Product on an extensive basis by the Respondent; and
2. trade secrets, know-how, techniques, data, inventions, practices, methods, and other confidential or proprietary technical, business, research, Development, and other information, and all rights in the Geographic Territory to limit the use or disclosure thereof, that are related to a Divestiture Product and that Respondent can demonstrate have been routinely used, prior to the Effective Date, for a Retained Product(s) that:



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- a. has been marketed or sold on an extensive basis by the Respondent within the two-year period immediately preceding the Acquisition; or
- b. for which, prior to the announcement of the Acquisition, there was an approved marketing plan to market or sell such a Retained Product on an extensive basis by the Respondent;

*provided however*, that, in cases where the aggregate retail sales in dollars within the two-year period immediately preceding the Acquisition of the Retained Product(s) collectively are less than the aggregate retail sales in dollars within the same period of the Divestiture Product(s) collectively, the above-described intellectual property shall be considered, at the Acquirer's option, to be Product Intellectual Property and, thereby, subject to assignment to the Acquirer; *provided further, however*, that in such cases, Respondent may take a license back from the Acquirer for such intellectual property for use in connection with the Retained Products and such a license to Respondent may be perpetual, fully paid-up and royalty-free license(s) with rights to sublicense.

QQ. "Product Manufacturing Employees" means all salaried employees of Respondent who have directly participated in the planning, design, implementation or operational management of the Product Manufacturing Technology of the specified Divestiture Product(s) (irrespective of the portion of working time involved unless such participation consisted solely of oversight of legal, accounting, tax or financial compliance) within the eighteen (18) month period immediately prior to the Closing Date; *provided, however*, that in each instance where: (1) a Carbamazepine Product Divestiture Agreement is specifically referenced and attached to this Order, and (2) such agreement becomes a Remedial Agreement for the Divestiture

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Products, “Product Manufacturing Employees” means the employees as specified in such Remedial Agreement for the Divestiture Products.

RR. “Product Manufacturing Technology” means:

1. all technology, trade secrets, know-how, and proprietary information (whether patented, patentable or otherwise) related to the manufacture of the Divestiture Product(s), including, but not limited to, the following: all product specifications, processes, product designs, plans, trade secrets, ideas, concepts, manufacturing, engineering, and other manuals and drawings, standard operating procedures, flow diagrams, chemical, safety, quality assurance, quality control, research records, clinical data, compositions, annual product reviews, regulatory communications, control history, current and historical information associated with the FDA Application(s) conformance and cGMP compliance, and labeling and all other information related to the manufacturing process, and supplier lists;
2. all active pharmaceutical ingredients related to the Divestiture Product(s); and,
3. for those instances in which the manufacturing equipment is not readily available from a Third Party, at the Acquirer’s option, all such equipment used to manufacture the Divestiture Product(s).

SS. “Product Marketing Materials” means all marketing materials used specifically in the marketing or sale of a Divestiture Product(s) in the Geographic Territory as of the Closing Date, including, without limitation, all advertising materials, training materials, product data, mailing lists, sales materials (e.g., detailing reports, vendor

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lists, sales data), marketing information (e.g., competitor information, research data, market intelligence reports, statistical programs (if any) used for marketing and sales research), customer information (including customer net purchases information to be provided on the basis of either dollars and/or units for each month, quarter or year), sales forecasting models, educational materials, and advertising and display materials, speaker lists, promotional and marketing materials, Website content and advertising and display materials, artwork for the production of packaging components, television masters and other similar materials related to the Divestiture Product(s); provided however, "Product Marketing Materials" excludes the pricing of each of the Divestiture Products to customers.

TT. "Product Research and Development Employees" means all salaried employees of Respondent who directly have participated in the research, Development, or regulatory approval process, or clinical studies of the specified Divestiture Product(s) (irrespective of the portion of working time involved, unless such participation consisted solely of oversight of legal, accounting, tax or financial compliance) within the eighteen (18) month period immediately prior to the Closing Date; *provided, however*, that in each instance where: (1) a Carbamazepine Product Divestiture Agreement is specifically referenced and attached to this Order, and (2) such agreement becomes a Remedial Agreement for the Divestiture Products, "Product Research and Development Employees" means the employees as specified in such Remedial Agreement for the Divestiture Products.

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

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VV. “Product Trademark(s)” means all proprietary names or designations, trademarks, service marks, trade names, and brand names, including registrations and applications for registration therefor (and all renewals, modifications, and extensions thereof) and all common law rights, and the goodwill symbolized thereby and associated therewith, for the Divestiture Product(s).

WW. “Proposed Acquirer” means an entity proposed by Respondent (or a Divestiture Trustee) to the Commission and submitted for the approval of the Commission as the acquirer for particular assets required to be assigned, granted, licensed, divested, transferred, delivered or otherwise conveyed by Respondent pursuant to this Order.

XX. “Remedial Agreement(s)” means the following:

1. any agreement between Respondent and an Acquirer that is specifically referenced and attached to this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto, related to the relevant assets or rights to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, and that has been approved by the Commission to accomplish the requirements of the Order in connection with the Commission’s determination to make this Order final;
2. any agreement between Respondent and a Third Party to effect the assignment of assets or rights of Respondent related to a Divestiture Product to the benefit of an Acquirer that is specifically referenced and attached to this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto, that has been approved by the Commission to accomplish the requirements of the Order in

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connection with the Commission's determination to make this Order final;

3. any agreement between Respondent and an Acquirer (or between a Divestiture Trustee and an Acquirer) that has been approved by the Commission to accomplish the requirements of this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto, related to the relevant assets or rights to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, and that has been approved by the Commission to accomplish the requirements of this Order; and/or
4. any agreement between Respondent and a Third Party to effect the assignment of assets or rights of Respondent related to a Divestiture Product to the benefit of an Acquirer that has been approved by the Commission to accomplish the requirements of this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto.

YY. "Retained Product" means any Product(s) other than a Divestiture Product.

ZZ. "Right of Reference or Use" means the authority to rely upon, and otherwise use, an investigation for the purpose of obtaining approval of an Application, including the ability to make available the underlying raw data from the investigation for FDA audit.

AAA. "Supply Cost" means a cost not to exceed the manufacturer's average direct per unit cost in United States dollars of manufacturing the Divestiture Product for the twelve (12) month period immediately preceding the Effective Date. "Supply Cost" shall expressly exclude any intracompany business transfer profit; *provided, however*, that in each instance where: (1) an agreement to Contract Manufacture is specifically referenced and attached to this

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Order, and (2) such agreement becomes a Remedial Agreement for a Divestiture Product, “Supply Cost” means the cost as specified in such Remedial Agreement for that Divestiture Product.

BBB. “Third Party(ies)” means any private entity other than the following: Respondent, Taro, or the Acquirer for the affected assets, rights and Divestiture Product(s).

CCC. “Torrent” means Torrent Pharmaceuticals Limited, a corporation organized, existing and doing business under and by virtue of the laws of Republic of India, with its headquarters address at Torrent House, off Ashram Road, Ahmedabad 380 009 India, and registered office of its United States subsidiary, Torrent Pharmaceuticals Inc., at 5380 Holiday Terrace, Suite 40, Kalamazoo, Michigan 49009.

DDD. “Website” means the content of the Website(s) located at the Domain Names, the Domain Names, and all copyrights in such Website(s), to the extent owned by Respondent; *provided, however*, “Website” shall not include the following: (1) content owned by Third Parties and other Product Intellectual Property not owned by Respondent that are incorporated in such Website(s), such as stock photographs used in the Website(s), *except* to the extent that Respondent can convey its rights, if any, therein; or (2) content unrelated to the Product(s).

**II.****IT IS FURTHER ORDERED** that:

A. Not later than the earlier of: (1) the day ten (10) days after the Effective Date or (2) the day ten (10) days after the date on which this Order becomes final, Respondent shall divest the Carbamazepine Product Assets, absolutely and

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in good faith, to Torrent pursuant to, and in accordance with, the Generic Divestiture Product Agreements (which agreements shall not vary or contradict, or be construed to vary or contradict, the terms of this Order, it being understood that this Order shall not be construed to reduce any rights or benefits of Torrent or to reduce any obligations of Respondent under such agreements), and each such agreement, if it becomes a Remedial Agreement related to the Carbamazepine Product Assets is incorporated by reference into this Order and made a part hereof;

*provided, however,* that if Respondent has divested the Carbamazepine Product Assets to Torrent prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondent that Torrent is not an acceptable purchaser of the Carbamazepine Product Assets then Respondent shall immediately rescind the transaction with Torrent, in whole or in part, as directed by the Commission, and shall divest the Carbamazepine Product Assets within one hundred eighty (180) days from the date the Order becomes final, absolutely and in good faith, at no minimum price, to an Acquirer and only in a manner that receives the prior approval of the Commission;

*provided further* that if Respondent has divested the Carbamazepine Product Assets to Torrent prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondent that the manner in which the divestiture was accomplished is not acceptable, the Commission may direct Respondent, or appoint a Divestiture Trustee, to effect such modifications to the manner of divestiture of the Carbamazepine Product Assets to Torrent (including, but not limited to, entering into additional agreements or arrangements) as the

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Commission may determine are necessary to satisfy the requirements of this Order.

- B. Prior to the Closing Date, Respondent shall secure all consents and waivers from all Third Parties that are necessary to permit Respondent to divest the assets required to be divested pursuant to this Order to the Acquirer, and/or to permit such Acquirer to continue the research, Development, manufacture, sale, marketing or distribution of the Divestiture Products;

*provided, however,* Respondent may satisfy this requirement by certifying that the Acquirer has executed all such agreements directly with each of the relevant Third Parties.

- C. Respondent shall transfer the Product Manufacturing Technology related to the Divestiture Products to the Acquirer in an organized, comprehensive, complete, useful, timely, and meaningful manner. Respondent shall, *inter alia*:
1. designate employees of Respondent knowledgeable with respect to such Product Manufacturing Technology to a committee for the purposes of communicating directly with such Acquirer and the Interim Monitor (if any has been appointed) for the purposes of effecting such transfer;
  2. prepare technology transfer protocols and transfer acceptance criteria for both the processes and analytical methods related to the Divestiture Products, such protocols and acceptance criteria to be subject to the approval of the Acquirer;
  3. prepare and implement a detailed technological transfer plan that contains, *inter alia*, the transfer of all relevant information, all appropriate documentation,



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all other materials, and projected time lines for the delivery of all Product Manufacturing Technology to the Acquirer; and

4. during the term of the Contract Manufacture, upon reasonable written notice and request from the Acquirer to Respondent, provide in a timely manner, at no greater than Direct Cost, assistance and advice to enable the Acquirer (or the Designee of the Acquirer) to:
  - a. manufacture the Divestiture Products in the same quality achieved by the Respondent and in commercial quantities;
  - b. obtain any Product Approvals necessary for the Acquirer to manufacture, sell, market or distribute the Divestiture Products; and
  - c. receive, integrate, and use such Product Manufacturing Technology.

## D. Respondent shall:

1. upon reasonable written notice and request from the Acquirer to Respondent, Respondent shall Contract Manufacture and deliver to the Acquirer, in a timely manner and under reasonable terms and conditions, a supply of each of the Divestiture Products at Respondent's Supply Cost, for a period of time sufficient to allow the Acquirer (or the Designee of the Acquirer) to obtain all of the relevant Product Approvals necessary to manufacture in commercial quantities, and in a manner consistent with cGMP, the finished drug product independently of Respondent and Taro and to secure sources of supply of the active pharmaceutical ingredients, excipients, other ingredients, and/or necessary components specified in

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the Respondent's Application(s) for the Product from entities other than Respondent or Taro;

2. make representations and warranties to the Acquirer that the Product(s) supplied through Contract Manufacture pursuant to a Remedial Agreement meet the relevant Agency-approved specifications. For the Product(s) to be marketed or sold in the Geographic Territory, Respondent shall agree to indemnify, defend and hold the Acquirer harmless from any and all suits, claims, actions, demands, liabilities, expenses or losses alleged to result from the failure of the Product(s) supplied to the Acquirer pursuant to a Remedial Agreement by Respondent to meet cGMP. This obligation may be made contingent upon the Acquirer giving Respondent prompt, adequate written notice of such claim and cooperating fully in the defense of such claim. The Remedial Agreement shall be consistent with the obligations assumed by Respondent under this Order; *provided, however*, that Respondent may reserve the right to control the defense of any such litigation, including the right to settle the litigation, so long as such settlement is consistent with Respondent's responsibilities to supply the ingredients and/or components in the manner required by this Order; *provided further* that this obligation shall not require Respondent to be liable for any negligent act or omission of the Acquirer or for any representations and warranties, express or implied, made by the Acquirer that exceed the representations and warranties made by Respondent to the Acquirer; *provided further* that in each instance where: (1) an agreement to divest relevant assets is specifically referenced and attached to this Order, and (2) such agreement becomes a Remedial Agreement for a Divestiture Product, each such agreement may contain limits on Respondent's aggregate liability resulting

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from the failure of the Products supplied to the Acquirer pursuant to such Remedial Agreement by Respondent to meet cGMP;

3. make representations and warranties to the Acquirer that Respondent shall hold harmless and indemnify the Acquirer for any liabilities or loss of profits resulting from the failure by Respondent to deliver the Products in a timely manner as required by the Remedial Agreement(s) unless Respondent can demonstrate that its failure was entirely beyond the control of Respondent and in no part the result of negligence or willful misconduct by Respondent; *provided, however*, that in each instance where: (1) an agreement to divest relevant assets is specifically referenced and attached to this Order, and (2) such agreement becomes a Remedial Agreement for a Divestiture Product, each such agreement may contain limits on Respondent's aggregate liability for such a breach;
4. during the term of the Contract Manufacture between Respondent and the Acquirer, upon written request of the Acquirer or Interim Monitor (if any has been appointed), make available to the Acquirer and the Interim Monitor (if any has been appointed) all records that relate to the manufacture of the relevant Divestiture Products that are generated or created after the Closing Date;
5. during the term of the Contract Manufacture between Respondent and the Acquirer, maintain manufacturing facilities necessary to manufacture each of the Divestiture Products in finished form, *i.e.*, suitable for sale to the ultimate consumer/patient; and
6. during the term of the Contract Manufacture between Respondent and the Acquirer, provide consultation with knowledgeable employees of Respondent and

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training, at the written request of the Acquirer and at a facility chosen by the Acquirer, for the purposes of enabling the Acquirer (or the Designee of the Acquirer) to obtain all Product Approvals to manufacture the Divestiture Products in the same quality achieved by the Respondent and in commercial quantities, and in a manner consistent with cGMP, independently of Respondent and Taro, and sufficient to satisfy management of the Acquirer that its personnel (or the Designee's personnel) are adequately trained in the manufacture of the Divestiture Products;

The foregoing provisions, II.D.1. - 6., shall remain in effect with respect to each Divestiture Product until the earliest of: (1) the date the Acquirer (or the Designee(s) of such Acquirer) is approved by the FDA to manufacture such Divestiture Product and able to manufacture such Divestiture Product in commercial quantities, in a manner consistent with cGMP, independently of Respondent; (2) the date the Acquirer notifies the Commission and the Respondent of its intention to abandon its efforts to manufacture such Divestiture Product; (3) the date of written notification from staff of the Commission that the Interim Monitor, in consultation with staff of the Commission, has determined that the Acquirer has abandoned its efforts to manufacture such Divestiture Product, or (4) four (4) years from the Closing Date.

## E. Respondent shall:

1. submit to the Acquirer, at Respondent's expense, all Confidential Business Information related to the Divestiture Products;
2. deliver such Confidential Business Information as follows:

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- a. in good faith;
  - b. in a timely manner, *i.e.*, as soon as practicable, avoiding any delays in transmission of the respective information; and
  - c. in a manner that ensures its completeness and accuracy and that fully preserves its usefulness;
3. pending complete delivery of all such Confidential Business Information to the Acquirer, provide the Acquirer and the Interim Monitor (if any has been appointed) with access to all such Confidential Business Information 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 and facilitating the delivery in a manner consistent with this Order;
  4. not use, directly or indirectly, any such Confidential Business Information related to the research, Development, manufacturing, marketing, or sale of the Divestiture Products other than as necessary to comply with the following:
    - a. the requirements of this Order;
    - b. Respondent's obligations to the Acquirer under the terms of any Remedial Agreement related to Divestiture Products; or
    - c. applicable Law;
  5. not disclose or convey any such Confidential Business Information, directly or indirectly, to any person except the Acquirer or other persons specifically

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- authorized by the Acquirer to receive such information; and
6. not provide, disclose or otherwise make available, directly or indirectly, any such Confidential Business Information related to the marketing or sales of the Divestiture Products to the employees associated with business related to those Retained Products that contain the same active pharmaceutical ingredient as the Divestiture Products.
- F. Respondent shall not enforce any agreement against a Third Party or the Acquirer to the extent that such agreement may limit or otherwise impair the ability of the Acquirer to acquire the Product Manufacturing Technology related to the Divestiture Products or related equipment from the Third Party. Such agreements include, but are not limited to, agreements with respect to the disclosure of Confidential Business Information related to such Product Manufacturing Technology.
- G. Not later than ten (10) days after the Closing Date, Respondent shall grant a release to each Third Party that is subject to an agreement as described in Paragraph II.F. that allows the Third Party to provide the relevant Product Manufacturing Technology or related equipment to the Acquirer. Within five (5) days of the execution of each such release, Respondent shall provide a copy of the release to the Acquirer.
- H. Respondent shall:
1. for each Divestiture Product, for a period of at least six (6) months from the Closing Date or upon the hiring of ten (10) Divestiture Product Core Employees by the Acquirer, whichever occurs earlier, provide the Acquirer with the opportunity to enter into employment contracts with the Divestiture Product

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Core Employees related to the Divestiture Products and assets acquired by such Acquirer. Each of these periods is hereinafter referred to as the “Divestiture Product Core Employee Access Period(s)”; and

2. not later than the earlier of the following dates: (1) ten (10) days after notice by staff of the Commission to Respondent to provide the Product Employee Information; or (2) ten (10) days after the Closing Date, provide the Acquirer or the Proposed Acquirer with the Product Employee Information related to the Divestiture Product Core Employees. Failure by 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;
3. during the Divestiture Product Core Employee Access Period(s), not interfere with the hiring or employing by the Acquirer of the Divestiture Product Core Employees related to the particular Divestiture Products and assets acquired by such Acquirer, and remove any impediments within the control of Respondent that may deter these employees from accepting employment with the Acquirer, including, but not limited to, any noncompete or nondisclosure provision of employment with respect to a Divestiture Product or other contracts with Respondent that would affect the ability or incentive of those individuals to be employed by the Acquirer. In addition, Respondent shall not make any counteroffer to such a Divestiture Product Core Employee who has received a written offer of employment from the Acquirer;

*provided, however,* that, subject to the conditions of continued employment prescribed in this Order, this

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Paragraph II.H.3. shall not prohibit Respondent from continuing to employ any Divestiture Product Core Employee under the terms of such employee's employment with Respondent prior to the date of the written offer of employment from the Acquirer to such 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, and manufacture 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 such Divestiture Product(s). Such incentives shall include a continuation of all employee compensation and benefits offered by Respondent until the Closing Date(s) for the divestiture of the assets related to the Divestiture Product(s) has occurred, including regularly scheduled raises, bonuses, and vesting of pension benefits (as permitted by Law);

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

5. for a period of one (1) year from the Closing Date, not:
  - a. directly or indirectly, solicit or otherwise attempt to induce any employee of the Acquirer with any amount of responsibility related to a Divestiture



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Product (“Divestiture Product Employee”) to terminate his or her employment relationship with the Acquirer; or

- b. hire any Divestiture Product Employee; *provided, however,* Respondent may hire any former Divestiture Product Employee whose employment has been terminated by the Acquirer or who independently applies for employment with Respondent, as long as such employee was not solicited in violation of the nonsolicitation requirements contained herein;

*provided, however,* Respondent may do the following: (1) advertise for employees in newspapers, trade publications or other media not targeted specifically at the Divestiture Product Employees; or (2) hire a Divestiture Product Employee who contacts Respondent on his or her own initiative without any direct or indirect solicitation or encouragement from Respondent.

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

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- J. Not later than thirty (30) days after the Closing Date, Respondent shall provide written notification of the restrictions on the use of the Confidential Business Information related to the Divestiture Products by Respondent's personnel to all of Respondent's employees who:
1. are or were directly involved in the research, Development, manufacturing, distribution, sale or marketing of each of the Divestiture Products;
  2. are directly involved in the research, Development, manufacturing, distribution, sale or marketing of Retained Products that contain the same active pharmaceutical ingredient as the Divestiture Products; and/or
  3. may have Confidential Business Information related to the Divestiture Products.

Respondent shall give such notification by e-mail with return receipt requested or similar transmission, and keep a file of such receipts for one (1) year after the Closing Date. Respondent shall provide a copy of such notification to the Acquirer. Respondent shall maintain complete records of all such agreements at Respondent's registered office within the United States and shall provide an officer's certification to the Commission stating that such acknowledgment program has been implemented and is being complied with. Respondent shall provide the Acquirer with copies of all certifications, notifications and reminders sent to Respondent's personnel.

- K. Until Respondent completes the divestitures required by Paragraph II.A. and fully transfers the related Product Manufacturing Technology to the Acquirer,

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1. Respondent shall take such actions as are necessary to:
    - a. maintain the full economic viability and marketability of the businesses associated with each Divestiture Product;
    - b. minimize any risk of loss of competitive potential for such business;
    - c. prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets related to each Divestiture Product;
    - d. ensure the assets required to be divested are transferred to the Acquirer in a manner without disruption, delay, or impairment of the regulatory approval processes related to the business associated with each Divestiture Product;
    - e. ensure the completeness of the transfer of the Product Manufacturing Technology; and
  2. Respondent shall not sell, transfer, encumber or otherwise impair the assets required to be divested (other than in the manner prescribed in this Order) nor take any action that lessens the full economic viability, marketability, or competitiveness of the businesses associated with each Divestiture Product.
- L. Respondent shall not join, file, prosecute or maintain any suit, in law or equity, against the Acquirer or the Divestiture Product Releasee(s) for the research, Development, manufacture, use, import, export, distribution, or sale of the Divestiture Product(s) under the following:
1. any Patent owned or licensed by Respondent as of the day after the Effective Date that claims a method of making, using, or administering, or a composition of

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matter, relating to the Carbamazepine Products, or that claims a device relating to the use thereof;

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

if such suit would have the potential to interfere with the Acquirer's freedom to practice the following: (1) the research, Development, or manufacture of the Carbamazepine Products; or (2) the use, import, export, supply, distribution, or sale of the Carbamazepine Products within the Geographic Territory. Respondent shall also covenant to the Acquirer that as a condition of any assignment, transfer, or license to a Third Party of the above-described Patents, the Third Party shall agree to provide a covenant whereby the Third Party covenants not to sue the Acquirer or the related Divestiture Product Releasee(s) under such Patents, if the suit would have the potential to interfere with the Acquirer's freedom to practice the following: (1) the research, Development, or manufacture of the Carbamazepine Products; or (2) the use, import, export, supply, distribution, or sale of the Carbamazepine Products within the Geographic Territory.

- M. Upon reasonable written notice and request from an Acquirer to Respondent, Respondent shall provide, in a timely manner, at no greater than Direct Cost, assistance of knowledgeable employees of Respondent to assist that Acquirer to defend against, respond to, or otherwise participate in any litigation related to the Product Intellectual Property related to any of the Divestiture Products, if such litigation would have the potential to

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interfere with the Acquirer's freedom to practice the following: (1) the research, Development, or manufacture of the Carbamazepine Products; or (2) the use, import, export, supply, distribution, or sale of the Carbamazepine Products within the Geographic Territory.

N. For any patent infringement suit in which the Respondent is alleged to have infringed a Patent of a Third Party prior to the Closing Date or for such suit as the Respondent has prepared or is preparing as of the Closing Date to defend against such infringement claim(s), and where such a suit would have the potential to interfere with the Acquirer's freedom to practice the following: (1) the research, Development, or manufacture of the Divestiture Products; or (2) the use, import, export, supply, distribution, or sale of the Divestiture Products within the Geographic Territory, Respondent shall:

1. cooperate with the Acquirer and provide any and all necessary technical and legal assistance, documentation and witnesses from Respondent in connection with obtaining resolution of any pending patent litigation involving such Divestiture Product;
2. waive conflicts of interest, if any, to allow Respondent's outside legal counsel to represent the Acquirer in any ongoing patent litigation involving such Divestiture Product; and
3. permit the transfer to the Acquirer of all of the litigation files and any related attorney work-product in the possession of Respondent's outside counsel relating to such Divestiture Product.

O. Respondent shall not, in the Geographic Territory:

1. use the Product Trademarks related to the Divestiture Products or any mark confusingly similar to such

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Product Trademarks, as a trademark, trade name, or service mark;

2. attempt to register such Product Trademarks;
3. attempt to register any mark confusingly similar to such Product Trademarks;
4. challenge or interfere with the Acquirer's use and registration of such Product Trademarks; or
5. challenge or interfere with the Acquirer's efforts to enforce its trademark registrations for and trademark rights in such Product Trademarks against Third Parties;

*provided however*, that this Order shall not preclude Respondent from continuing to use those trademarks, tradenames, or service marks related to the Retained Products as of the Effective Date.

- P. Respondent shall not seek, directly or indirectly, pursuant to any dispute resolution mechanism incorporated in any Remedial Agreement, or in any agreement related to any of the Divestiture Products a decision the result of which would be inconsistent with the terms of this Order and/or the remedial purposes thereof.

**III.**

**IT IS FURTHER ORDERED** that:

- A. At any time after Respondent signs the Consent Agreement in this matter, the Commission may appoint a monitor ("Interim Monitor") to assure that Respondent expeditiously complies with all of its obligations and perform all of its responsibilities as required by this Order,

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the Order to Maintain Assets and the Remedial Agreements.

- B. The Commission shall select the Interim Monitor, subject to the consent of Respondent, which consent shall not be unreasonably withheld. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of a proposed Interim Monitor within ten (10) days after notice by the staff of the Commission to Respondent of the identity of any proposed Interim Monitor, Respondent shall be deemed to have consented to the selection of the proposed Interim Monitor.
- C. Not later than ten (10) days after the appointment of the Interim Monitor, Respondent shall execute an agreement that, subject to the prior approval of the Commission, confers on the Interim Monitor all the rights and powers necessary to permit the Interim Monitor to monitor Respondent's compliance with the relevant requirements of the Order in a manner consistent with the purposes of the Order.
- D. If an Interim Monitor is appointed, Respondent shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Interim Monitor:
  - 1. The Interim Monitor shall have the power and authority to monitor Respondent's compliance with the divestiture and asset maintenance obligations and related requirements of the Order, and shall exercise such power and authority and carry out the duties and responsibilities of the Interim Monitor in a manner consistent with the purposes of the Order and in consultation with the Commission.
  - 2. The Interim Monitor shall act in a fiduciary capacity for the benefit of the Commission.

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3. The Interim Monitor shall serve until the date of completion by Respondent of the divestiture of all Carbamazepine Product Assets and the transfer of the Product Manufacturing Technology in a manner that fully satisfies the requirements of this Order and until the earliest of:
  - (1) with respect to each Divestiture Product, the date the Acquirer (or the Designee(s) of such Acquirer) is approved by the FDA to manufacture such Divestiture Product and able to manufacture such Divestiture Product in commercial quantities, in a manner consistent with cGMP, independently of Respondent and Taro;
  - (2) with respect to each Divestiture Product, the date the Acquirer notifies the Commission and the Respondent of its intention to abandon its efforts to manufacture such Divestiture Product; or
  - (3) with respect to each Divestiture Product, the date of written notification from staff of the Commission that the Interim Monitor, in consultation with staff of the Commission, has determined that the Acquirer has abandoned its efforts to manufacture such Divestiture Product;

*provided, however,* that the Commission may extend or modify this period as may be necessary or appropriate to accomplish the purposes of the Orders;

*provided, further,* that, with respect to each Divestiture Product, the Interim Monitor's service shall not exceed five (5) years from the Closing Date on the Remedial Agreement(s) to Contract Manufacture such Divestiture Product.



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4. Subject to any demonstrated legally recognized privilege, the Interim Monitor shall have full and complete access to Respondent's personnel, books, documents, records kept in the normal course of business, facilities and technical information, and such other relevant information as the Interim Monitor may reasonably request, related to Respondent's compliance with its obligations under the Order, including, but not limited to, its obligations related to the relevant assets. Respondent shall cooperate with any reasonable request of the Interim Monitor and shall take no action to interfere with or impede the Interim Monitor's ability to monitor Respondent's compliance with the Order.
5. The Interim Monitor shall serve, without bond or other security, at the expense of Respondent, on such reasonable and customary terms and conditions as the Commission may set. The Interim Monitor shall have authority to employ, at the expense of Respondent, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Interim Monitor's duties and responsibilities.
6. Respondent shall indemnify the Interim Monitor and hold the Interim Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Interim Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Interim Monitor.

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7. Respondent shall report to the Interim Monitor in accordance with the requirements of this Order and/or as otherwise provided in any agreement approved by the Commission. The Interim Monitor shall evaluate the reports submitted to the Interim Monitor by Respondent, and any reports submitted by the Acquirer with respect to the performance of Respondent's obligations under the Order or the Remedial Agreement(s). Within thirty (30) days from the date the Interim Monitor receives these reports, the Interim Monitor shall report in writing to the Commission concerning performance by Respondent of its obligations under the Order; *provided, however*, beginning one hundred twenty (120) days after Respondent has filed its final report pursuant to Paragraph VI.B., and every one hundred twenty (120) days thereafter, the Interim Monitor shall report in writing to the Commission concerning progress by the Acquirer 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 Respondent and Taro.
  8. Respondent may require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, that such agreement shall not restrict the Interim Monitor from providing any information to the Commission.
- E. The Commission may, among other things, require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign an appropriate

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confidentiality agreement related to Commission materials and information received in connection with the performance of the Interim Monitor's duties.

- F. If the Commission determines that the Interim Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Interim Monitor in the same manner as provided in this Paragraph.
- G. The Commission may on its own initiative, or at the request of the Interim Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Order.
- H. The Interim Monitor appointed pursuant to this Order may be the same person appointed as a Divestiture Trustee pursuant to the relevant provisions of this Order.

**IV.****IT IS FURTHER ORDERED** that:

- A. If Respondent has not fully complied with the obligations to assign, grant, license, divest, transfer, deliver or otherwise convey the Carbamazepine Product Assets as required by this Order, the Commission may appoint a trustee ("Divestiture Trustee") to assign, grant, license, divest, transfer, deliver or otherwise convey these assets in a manner that satisfies the requirements of this Order. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondent shall consent to the appointment of a Divestiture Trustee in such action to assign, grant, license, divest, transfer, deliver or otherwise convey these assets. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph shall preclude the

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Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondent to comply with this Order.

- B. The Commission shall select the Divestiture Trustee, subject to the consent of Respondent, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondent of the identity of any proposed Divestiture Trustee, Respondent shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
- C. Not later than ten (10) days after the appointment of a Divestiture Trustee, Respondent shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the divestiture required by this Order.
- D. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph, Respondent shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
  - 1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver or otherwise convey the assets that are required

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by this Order to be assigned, granted, licensed, divested, transferred, delivered or otherwise conveyed.

2. The Divestiture Trustee shall have one (1) year after the date the Commission approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the one (1) year period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission; *provided, however,* the Commission may extend the divestiture period only two (2) times.
3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered or otherwise conveyed by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondent shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondent shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondent shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.
4. The Divestiture Trustee shall use commercially reasonable efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent's absolute and unconditional obligation to divest expeditiously

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and at no minimum price. The divestiture shall be made in the manner and to an Acquirer as required by this Order; *provided, however*, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by Respondent from among those approved by the Commission; and, *provided further, however*, that Respondent shall select such entity within five (5) days after receiving notification of the Commission's approval.

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

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6. Respondent shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee.
  7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order; *provided, however,* that the Divestiture Trustee appointed pursuant to this Paragraph may be the same Person appointed as Interim Monitor pursuant to the relevant provisions of the Order to Maintain Assets in this matter.
  8. The Divestiture Trustee shall report in writing to Respondent and to the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.
  9. Respondent may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; *provided, however,* such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.
- E. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the

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Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph.

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

**V.****IT IS FURTHER ORDERED** that:

With respect to Confidential Business Information, Respondent shall assure that, in any instance wherein its counsel (including in-house counsel under appropriate confidentiality arrangements) either retains unredacted copies of documents or other materials provided to the Acquirer or accesses original documents (under circumstances where copies of documents are insufficient or otherwise unavailable) provided to the Acquirer, that Respondent's counsel does so only in order to do the following:

- A. comply with any Remedial Agreement, this Order, any Law (including, without limitation, any requirement to obtain regulatory licenses or approvals, and rules promulgated by the Commission), any data retention requirement of any applicable Government Entity, or any taxation requirements; or
- B. defend against, respond to, or otherwise participate in any litigation, investigation, audit, process, subpoena or other proceeding relating to the divestiture or any other aspect of the Divestiture Products or assets and businesses associated with those Products; *provided, however*, that Respondent may disclose such information as necessary



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for the purposes set forth in this Paragraph pursuant to an appropriate confidentiality order, agreement or arrangement;

*provided, however,* that pursuant to this Paragraph V, Respondent shall: (1) require those who view such unredacted documents or other materials to enter into confidentiality agreements with the Acquirer (but shall not be deemed to have violated this requirement if the Acquirer withholds such agreement unreasonably); and (2) use its best efforts to obtain a protective order to protect the confidentiality of such information during any adjudication.

**VI.**

**IT IS FURTHER ORDERED** that:

- A. Within five (5) days of the Acquisition, Respondent shall submit to the Commission a letter certifying the date on which the Acquisition occurred.
- B. Within thirty (30) days after the date this Order becomes final, and every sixty (60) days thereafter until Respondent has fully complied with the following: Paragraphs II.A , II.B., II.C.1.- 3., II.E.1.-3., II.G., II.H.1.-4., II.J., and II.K., Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, is complying, and has complied with this Order. Respondent shall submit at the same time a copy of its report concerning compliance with this Order to the Interim Monitor, if any Interim Monitor has been appointed. Respondent shall include in its reports, among other things that are required from time to time, a full description of the efforts being made to comply with the relevant Paragraphs of the Order, including a full description of all substantive contacts or negotiations related to the divestiture of the relevant assets and the identity of all Persons contacted, including copies of all

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written communications to and from such Persons, all internal memoranda, and all reports and recommendations concerning completing the obligations.

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

**VII.**

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

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

**VIII.**

**IT IS FURTHER ORDERED** that:

- A. Any Remedial Agreement shall be deemed incorporated into this Order.
- B. Any failure by Respondent to comply with any term of such Remedial Agreement shall constitute a failure to comply with this Order.

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- C. Respondent shall include in each Remedial Agreement related to each of the Divestiture Products a specific reference to this Order, the remedial purposes thereof, and provisions to reflect the full scope and breadth of Respondent's obligations to the Acquirer pursuant to this Order.
- D. Respondent shall also include in each Remedial Agreement a representation from the Acquirer that such Acquirer shall use commercially reasonable efforts to secure the FDA approval(s) necessary to manufacture, or to have manufactured by a Third Party, in commercial quantities, each such Divestiture Product and to have any such manufacture to be independent of Respondent and Taro, all as soon as reasonably practicable.
- E. Respondent shall not modify or amend any of the terms of any Remedial Agreement without the prior approval of the Commission.

**IX.**

**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 Respondent made to its principal United States offices, registered office of its United States subsidiary, or its headquarters address, Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. access, during business office hours of 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 such Respondent related to compliance with this Order, which

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copying services shall be provided by such Respondent at the request of the authorized representative(s) of the Commission and at the expense of the Respondent; and

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

**X.**

**IT IS FURTHER ORDERED** that the purpose of the divestiture of the Carbamazepine Product Assets and the transfer of the Product Manufacturing Technology related to the Carbamazepine Products and the related obligations imposed on the Respondent by this Order is:

- A. to ensure the continued use of the Carbamazepine Product Assets in the research, Development, and manufacture of each of the Carbamazepine Products for the purposes of the business associated with each Divestiture Product within the Geographic Territory;
- B. to provide for the future use of the Carbamazepine Product Assets for the distribution, sale and marketing of the Carbamazepine Products in the Geographic Territory;
- C. to create a viable and effective competitor, who is independent of the Respondent and Taro:
  - 1. in the research, Development, and manufacture of each of the Carbamazepine Products for the purposes of the business associated with each Carbamazepine Product within the Geographic Territory; and
  - 2. the distribution, sale and marketing of the each of the Carbamazepine Products in the Geographic Territory; and,

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- D. to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint in a timely and sufficient manner.

**XI.**

**IT IS FURTHER ORDERED** that this Order shall terminate on September 16, 2018.

By the Commission.

**NON-PUBLIC APPENDIX II.A.  
GENERIC DIVESTITURE PRODUCT AGREEMENTS**

**[Redacted From Public Record  
But Incorporated By Reference]**

**ANALYSIS OF CONSENT ORDERS TO AID PUBLIC  
COMMENT**

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") from Sun Pharmaceutical Industries Ltd. ("Sun") which is designed to remedy the anticompetitive effects of the acquisition of Taro Pharmaceutical Industries Ltd. ("Taro") by Sun. Under the terms of the proposed Consent Agreement, Sun is required to divest all of Sun's rights

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and assets necessary to manufacture and market: (1) generic immediate-release carbamazepine tablets; (2) generic chewable carbamazepine tablets; and (3) generic extended-release carbamazepine tablets to Torrent Pharmaceuticals Ltd. (“Torrent”).

The proposed Consent Agreement has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the proposed Consent Agreement and the comments received, and will decide whether it should withdraw from the proposed Consent Agreement, modify it, or make final the Decision and Order (“Order”).

Pursuant to an Agreement of Merger executed on May 18, 2007, Sun proposed to acquire all of the issued and outstanding shares of Taro in a transaction then valued at approximately \$454 million. In the event that agreement has been properly terminated, as Taro claims, Sun intends to acquire controlling interest in Taro via an Option Agreement executed at the time of the merger agreement and/or via a tender offer. The Commission’s Complaint alleges that the proposed acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by lessening competition in the U.S. markets for the manufacture and sale of generic immediate-release carbamazepine tablets and chewable carbamazepine tablets, and in the research, development, manufacture and sale of extended-release carbamazepine tablets (collectively, the “Products”). The proposed Consent Agreement will remedy the alleged violations by replacing the lost competition that would result from the acquisition in each of these markets.

Sun, headquartered in Mumbai, India, is a leading developer, manufacturer, marketer, and distributor of niche pharmaceuticals in its home country and active pharmaceutical ingredients (APIs’)

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and generic drugs worldwide. Sun is intent on growing its U.S. generic drugs business and sells generic pharmaceuticals in the United States through wholly-owned Caraco Pharmaceutical Laboratories Ltd. Taro, headquartered in Israel, also develops and manufactures generic pharmaceutical products, primarily for sale in the United States.

**The Products and Structure of the Markets**

The proposed acquisition of Taro by Sun would increase Sun's worldwide position in generic pharmaceuticals and augment Sun's pipeline of future generic products. Sun and Taro overlap in a number of generic pharmaceutical markets, and if consummated, the transaction likely would lead to anticompetitive effects in the markets for three different forms of carbamazepine. Carbamazepine is an anticonvulsant that is used primarily as an anti-epileptic drug. It is taken daily, either alone or in combination with other drugs, to prevent and control seizures.

The transaction would reduce the number of competing generic suppliers in the overlap markets. The number of generic suppliers has a direct and substantial effect on generic pricing as each additional generic supplier can have a competitive impact on the market. Because there are at least two generic equivalents for each of the products at issue, the branded versions no longer significantly constrain the price of the generic drugs.

Generic immediate-release carbamazepine tablets are AB-rated generic versions of Novartis's Tegretol®. In this market, Taro is the leading supplier with half the market. Teva Pharmaceutical Industries Ltd. ("Teva") follows with more than a quarter of the market, and Sun's Caraco is the third-leading supplier with a share of about 18 percent. The only other supplier currently in the market is Apotex.

Generic chewable carbamazepine tablets are a chewable form of the anticonvulsant that carry the same label and indications as the immediate-release tablets. They are prescribed in the same

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way as the immediate-release products, but come in a more convenient dosing form, which makes them better-suited for pediatric, geriatric, and other patients who may have difficulty swallowing pills. With a market share of 65 percent, Teva is the leading seller of the generic chewable carbamazepine tablets in 2007, followed by Taro with a share of about 31 percent and Sun, with a share of only 4 percent in 2007. Cadista, the only other approved supplier of generic chewable carbamazepine tablets, is not supplying the product currently.

Sun and Taro are the only companies that have applied for Food and Drug Administration (“FDA”) approval of generic versions of Novartis’s Tegretol®-XR extended-release carbamazepine tablets. This extended-release formulation of the drug is indicated for the same uses as the immediate release products but offers the added convenience of a less frequent dosing regimen.

**Entry**

Entry into the markets for the manufacture and sale of any of these three carbamazepine products would not be timely, likely or sufficient in its magnitude, character, and scope to deter or counteract the anticompetitive effects of the acquisition. Entry would not take place in a timely manner because the combination of generic drug development times and FDA drug approval requirements takes at least two years. Entry would not be likely because the relevant markets are relatively small and in decline, so the limited sales opportunities available to a new entrant are likely insufficient to warrant the time and investment necessary to enter.

**Competitive Effects**

The proposed acquisition would cause significant anticompetitive harm to consumers in the U.S. markets for the manufacture and sale of generic immediate-release carbamazepine



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tablets, generic chewable carbamazepine tablets, and generic extended-release carbamazepine tablets. In generic pharmaceutical markets, pricing is heavily influenced by the number of competitors that participate in a given market. Both empirical research and the Commission's many investigations into generic drug competition confirm that finding. Here, the evidence shows that, given the small number of suppliers or prospective suppliers in the relevant markets, the prices of the generic pharmaceutical products at issue decrease with the entry of each additional competitor.

Among currently-marketed products, the acquisition would reduce the number of firms producing generic chewable carbamazepine tablets from three to two, with Teva being the only remaining competitor (at least until Cadista is able to re-enter the market). Similarly, the proposed transaction would reduce from four to three the number of firms remaining in the immediate-release carbamazepine tablet market, leaving Teva as the only other significant player. In the market for generic versions of extended-release carbamazepine tablets, the merging parties are the only two firms in the process of entering, so the proposed transaction likely would eliminate the generic competition that would otherwise exist in that market when the products are introduced.

As the market share information suggests, the proposed transaction would eliminate one of a small number of suppliers in the markets for two currently-marketed generic carbamazepine products, with the likely result that prices would increase above current levels. For extended-release generic carbamazepine, the consolidation would result in a merger to monopoly, with the likely result that prices would be higher than they would be without the transaction and both companies had entered independently.

The competitive concerns can be characterized as both unilateral and coordinated in nature. The homogenous nature of the products involved, the minimal incentives to deviate, and the

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relatively predictable prospects of gaining new business all indicate that the firms in the market will find it profitable to coordinate their pricing. The impact that a reduction in the number of firms would have on pricing can also be explained in terms of unilateral effects, as the likelihood that the merging parties would be the first and second choices in a significant number of bidding situations is enhanced where the number of firms participating in the market decreases substantially.

**The Consent Agreement**

The proposed Consent Agreement effectively remedies the proposed acquisition's anticompetitive effects in the relevant product markets. Pursuant to the Consent Agreement, Sun is required to divest all of its rights and assets related to the Products to a Commission-approved acquirer no later than the earlier of ten (10) days after the acquisition occurs or ten (10) days after the Commission's Order becomes final. Specifically, the proposed Consent Agreement requires that Sun divest its assets in the Products to Torrent Pharmaceutical Limited ("Torrent").

The acquirer of the divested assets must receive the prior approval of the Commission. The Commission's goal in evaluating a possible purchaser of divested assets is to maintain the competitive environment that existed prior to the acquisition. A proposed acquirer of divested assets must not itself present competitive problems.

Torrent, a growing generic manufacturer, headquartered in India, is particularly well-positioned to manufacture and market its acquired products and compete effectively in those markets. Currently, Torrent sells generic pharmaceuticals in the United States but none of the relevant products, and therefore its acquisition of the relevant products would not raise independent competitive concerns. Torrent has numerous Abbreviated New Drug Applications (ANDAs") pending approval at the FDA, and has the resources, capabilities, reputation, and experience in

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marketing generic products, as well as a central focus on rapidly growing its U.S. generic drugs business, necessary to expeditiously replicate the competition that would be lost with the proposed acquisition.

If the Commission determines that Torrent is not an acceptable acquirer of the assets to be divested, or that the manner of the divestitures to Torrent is not acceptable, Sun must unwind the sale and divest the assets within six (6) months of the date the Order becomes final to another Commission-approved acquirer. If the parties fail to divest within six (6) months, the Commission may appoint a trustee to divest the Products.

The proposed remedy contains several provisions to ensure that the divestitures are successful. The Order requires Sun to provide transitional services to enable the Commission-approved acquirer to obtain all of the necessary approvals from the FDA. These transitional services include technology transfer assistance to manufacture the Products in substantially the same manner and quality employed or achieved by Sun.

The purpose of this analysis is to facilitate public comment on the proposed Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Order or to modify its terms in any way.