

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FEDERAL TRADE COMMISSION)
600 Pennsylvania Avenue, N.W.)
Washington, D.C. 20580,)
)
Plaintiff,)
v.)
)
THE HEARST TRUST)

injunctive and other equitable relief for violations of Sections 7 and 7A of the Clayton Act, 15 U.S.C §§ 18 and 18a, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45;

AND WHEREAS, in conjunction with the filing of this Final Order and Stipulated Permanent Injunction (“Final Order”), Plaintiff and Defendants, Defendant The Hearst Trust, Defendant The Hearst Corporation (collectively “Defendant Hearst”), and Defendant First DataBank, by their respective attorneys, have stipulated and agreed to entry by the Court of this Final Order without trial or adjudication of any issue of fact or law;

AND WHEREAS, this Final Order is entered for settlement purposes only and does not constitute any evidence against, or an admission of liability or of any issue of fact, other than jurisdictional, or law, by the Defendants;

AND WHEREAS, Defendants agree to be bound by the provisions of this Final Order pending its approval by the Court;

AND WHEREAS, Plaintiff requires Defendants to make certain divestitures and other related relief to remedy the competition lost as alleged in the Complaint;

AND WHEREAS, another aspect of this Final Order is the payment by Defendants of \$19 million to disgorge illegally gained profits from the Acquisition as alleged in the Complaint and that the disgorged amount will be used to compensate customers claiming injury and not to pay attorney fees;

AND WHEREAS, Defendants have represented to the Plaintiff that the divestiture and other related relief required below can and will be made and that Defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the terms of divestiture or other relief provisions contained below;

AND WHEREAS, Defendants have agreed in this Final Order that if the divestiture and other related relief is not completed within the time required in this Final Order, the Plaintiff may appoint a Divestiture Administrator to achieve the remedial purposes of this Final Order;

AND WHEREAS, each Defendant, without admitting that it has violated Sections 7 and 7A of the Clayton Act, 15 U.S.C. §§ 18 and 18a, and Section 5 of the FTC Act, 15 U.S.C. § 45, agrees to the entry of this Final Order under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and Section 7A(g)(2) of the Clayton Act, 15 U.S.C. § 18a(g)(2);

AND WHEREAS, in a related case, Defendants The Hearst Trust and The Hearst Corporation have agreed to pay the United States of America a civil penalty for their alleged violation of Section 7A of the Clayton Act, 15 U.S.C. § 18a, with regard to Defendants' 1998 acquisition of J.B. Laughrey, Inc., including Medi-Span, Inc. and Medi-Span International, Inc.;

NOW THEREFORE

- C. Defendants transact and do business in the District of Columbia, so venue is proper in this Court under Section 13(b) of the FTC Act; 28 U.S.C. § 1391(b) and (c); and Section 12 of the Clayton Act, 15 U.S.C. § 22.
- D. Defendants waive all rights to appeal or otherwise challenge or contest the validity of this Final Order, and Defendants waive any claim under the Equal Access to Justice Act,

The Hearst Trust, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

- D. “Defendant FDB” means First DataBank, Inc., a Missouri corporation, a wholly-owned subsidiary of Defendant The Hearst Corporation, with its principal place of business at 1111 Bayhill Drive, San Bruno, California 94066, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by First DataBank, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- E. “Defendants” mean Defendant Hearst and Defendant FDB, individually and collectively.
- F. “Commission” means the Federal Trade Commission.
- G. “Acquirer” means the entity to whom the Divestiture Administrator divests the Divestiture Asset Package pursuant to Paragraph X of this Final Order.
- H. “Acquisition” means the January 15, 1998, acquisition by Defendants of J.B. Laughrey, Inc., including Medi-Span, Inc. and Medi-Span International, Inc., as described in Plaintiff’s Complaint in this matter.
- I. “APA” means the Revised Asset Purchase Agreement by and among Defendant First DataBank and Lippincott Williams & Wilkins, Inc. d/b/a Facts and Comparisons, and Lippincott-Raven Medical, Ltd, dated November 9, 2001, including all attachments, addenda and exhibits, attached as Confidential Exhibit A to this Final Order, and all amendments or changes thereto, if any, that receive the prior approval of Plaintiff, in its sole discretion.

- J. “APA Assets” means: those assets and rights to be transferred or licensed pursuant to the APA; all assets currently in existence that were transferred in the Acquisition, except for equipment not included in the assets transferred pursuant to the APA; and all research, plans and improvements for all such assets and all versions of all such assets.
- K. “Clearly and conspicuously” means that:
1. In an advertisement communicated on the Internet and online services, the visual notice shall be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it.
 2. In a print advertisement, the notice shall be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears.
- L. “Contact Person” means the person or persons at the Customer who has or have been, in the normal course of business, the person or persons to whom Defendants send information to or contact regarding Defendants’ Integratable Drug Information Database products.
- M. “Customer” means any person who acquires an Integratable Drug Information Database product directly from Defendants, such as MDDDB, NDDF and NDDF Plus, including former Medi-Span customers, software vendors and system integrators.
- N. “Date of Divestiture” means the date on which Defendants and Lippincott close on the APA pursuant to Paragraph III.A.

- O. “Designated Editorial Staff” means those specific employees and/or those employees doing specific jobs within Defendants’ Editorial Staff listed on Confidential Exhibit B to this Final Order.
- P. “Divestiture and Disgorgement Stipulation” means the stipulation signed by Defendants and the Plaintiff on November 9, 2001, attached to this Final Order, agreeing to the entry of this Final Order.
- Q. “Divestiture Asset Package” means an asset package similar to the APA Assets, subject to modification by the Plaintiff and approved by the Court, that, if necessary, will be divested pursuant to Paragraph X of this Final Order.
- R. “Editorial Staff” means employees who provide services relating to the collection and input of information and data into NDDF or MDDB or products related to those databases including, but not limited to, pharmacists, pharmacist technicians and other database technology support staff.
- S. “Facts and Comparisons” means Facts and Comparisons, an unincorporated business that is part of Lippincott and headquartered in St. Louis, Missouri.
- T. “Integratable Drug Information Database” means an electronic database containing clinical, pricing, descriptive and other information about prescription and non-prescription pharmaceuticals that is capable of being integrated with other computerized information systems to help physicians, pharmacists, and others obtain information regarding the prescription, dispensing, and purchase of medicines, and that provides drug information for patients that use medicines.

- U. “Key Defendants’ Employees” means up to twenty (20) employees of Defendant FDB, as designated on a confidential list by the Acquirer who will acquire the Divestiture Asset Package pursuant to a divestiture under Paragraph X.
- V. “Lippincott” means Lippincott Williams & Wilkins, Inc., a Delaware corporation, and Lippincott-Raven Medical, Ltd., a Delaware corporation, and their parent, Wolters Kluwer nv, a Dutch corporation, collectively. Lippincott is part of the International Health and Science division of Wolters Kluwer.
- W. “MDDB” means the Master Drug Data Base, an Integratable Drug Information Database originally created by Medi-Span and currently owned by Defendants and related products.
- X. “Medi-Span” means Medi-Span, Inc. and Medi-Span International, Inc., collectively, which were, prior to their acquisition by Defendants, formerly subsidiaries of J.B. Laughrey, Inc., Indiana corporations, with their principal place of business at 8425 Woodfield Crossing Blvd., Indianapolis, Indiana 46240.
- Y. “NDDF” means the National Drug Database File, an Integratable Drug Information Database created and owned by Defendant FDB.
- Z. “NDDF Plus” means an Integratable Drug Information Database product created by Defendant FDB using components and modules from both NDDF and MDDB.
- AA. “Shared Editorial Agreement” means Exhibit J to the APA that relates to Defendants’ provision of editorial services to Facts and Comparisons.
- BB. “Transitional Editorial Agreement” means Exhibit K to the APA that relates to the provision of editorial services to Defendants and Facts and Comparisons after the termination of the Shared Editorial Agreement.

CC. “Transition Services Agreement” means Exhibit G to the APA, which relates in part to the Defendants transferring certain technology and customer information to Facts and Comparisons after the Date of Divestiture.

III. Divestiture

IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT:

- A. Within three (3) days of the entry of this Final Order, Defendants shall divest the APA Assets, as an ongoing business, by closing on the APA in a manner consistent with this Final Order, absolutely and in good faith, to Lippincott.
1. After entry of this Final Order, Defendants shall not, without the prior approval of the Plaintiff, in its sole discretion, modify or amend the APA, including, *inter alia*, the Transition Services Agreement, the Shared Editorial Agreement and the Transitional Editorial Agreement;
 2. Defendants shall comply with all provisions of the APA, including, *inter alia*, the Transition Services Agreement, the Shared Editorial Agreement and the Transitional Editorial Agreement. Any failure to comply with the APA including, *inter alia*, the Transition Services Agreement, the Shared Editorial Agreement and the Transitional Editorial Agreement, shall constitute a failure to comply with this Final Order.
- B. Pending divestiture of the APA Assets, Defendants shall take such actions as are reasonably necessary to maintain the viability and marketability of the APA Assets, and

to prevent the destruction, removal, wasting, deterioration, sale, disposition, transfer or impairment of any of the assets, except for ordinary wear and tear.

- C. The purpose of the divestiture and licensing pursuant to this Paragraph III or Paragraph X is to ensure the continued use of the assets that are divested and licensed in the same business in which they were engaged at the time Defendants signed the Divestiture and Disgorgement Stipulation, to reestablish the business in which they were engaged at the time of the Acquisition, to create an independent and viable competitor, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Plaintiff's Complaint.

IV. No Interference with Access to Information

IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT Defendants shall not, by using or enforcing license agreements existing at the Date of Divestiture or

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(30) days notice, at any time over a period of twelve months starting on the date that the notification is received by the Customer. The letter shall be substantially similar to Exhibit E to this Final Order.

- B. Defendants shall include with any new or renewed contracts or amendments entered into by Defendant FDB and any Customers during the eighteen (18) month period following the Date of Divestiture a provision allowing any Customer to terminate any such new or renewed contract or amendment during that eighteen (18) month period, without any

location, type size and color similar to the location, type size and color of articles

VI. Employment

IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT:

- A. To enable Facts and Comparisons to make offers of employment, Defendants shall provide to Facts and Comparisons, Plaintiff and Monitor, no later than three (3) days after the Date of Divestiture:
1. a list of all former Medi-Span employees who were working for Medi-Span at the time of the Acquisition, whether or not they continue to work for Defendants, including job titles and job descriptions at Medi-Span and with Defendants, and including their current or last known telephone numbers and addresses;
 2. a list of all employees who were working for Defendant FDB at the time of the Acquisition but are no longer employed by Defendant FDB, including job titles and job descriptions at Defendant FDB and current or last known telephone numbers and addresses; and
 3. a list of all employees of Defendant FDB currently involved in the production, sale, updating, research and development, and maintenance of the APA Assets, including their salary, job title, job description, address and telephone number.

by Defendants and Facts and Comparisons pursuant to Schedule 9.3 of the APA, to be employed by Facts and Comparisons upon the Date of Divestiture:

1. allow Facts and Comparisons an opportunity to interview each person;
 2. allow Facts and Comparisons to inspect the personnel files and other documentation to the extent permissible under applicable laws;
 3. not offer any incentive to decline employment with Facts and Comparisons;
 4. not interfere with any negotiations by Facts and Comparisons to employ any such person;
 5. remove any contractual impediments with Defendants that may deter any such person from accepting employment with Facts and Comparisons and assign any confidentiality agreements or restrictions, except as to information related solely to products not transferred, either by divestiture or license, to Facts and Comparisons, and any non-compete agreements; and
 6. vest all pension rights, current and accrued, of any such employee as of the date of transition to employment with Facts and Comparisons.
- C. For a period of two (2) years after the Date of Divestiture, Defendants shall not solicit for employment any employee of Facts and Comparisons unless and until such employee's employment by Facts and Comparisons has been terminated, either by the employee or Facts and Comparisons.

VII. Editorial Arrangement

IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT:

- D. Unless terminated earlier by Facts and Comparisons, the Shared Editorial Agreement shall terminate three (3) years after the Date of Divestiture.
- E. PROVIDED, HOWEVER, no earlier than two and one-half (2½) years after the Date of Divestiture and no later than three (3) years after the Date of Divestiture, Defendants with concurrence of Facts and Comparisons may file a request to the Plaintiff for Plaintiff's prior approval to create an independent joint venture, including Defendant FDB and Facts and Comparisons, to do all or some of the editorial functions provided for in the Shared Editorial Agreement ("Joint Venture Request"). If the Plaintiff, in its sole discretion, approves the Joint Venture Request, the joint venture must assume the duties of providing the editorial functions to Defendants and Facts and Comparisons within six (6) months of that decision. Until the decision is rendered by the Plaintiff and, if the Joint Venture Request is approved, until the joint venture assumes the editorial functions, Defendants and Facts and Comparisons may continue the Shared Editorial Agreement.
- F. Defendants shall begin the Transitional Editorial Agreement upon:
1. termination of the Shared Editorial Agreement; or
 2. receipt of notice that Plaintiff has rejected the Joint Venture Request.
- G. For the first three-month period of the Transitional Editorial Agreement, Defendants shall facilitate the hiring of Designated Editorial Staff by Facts and Comparisons by:

1. allowing Facts and Comparisons an opportunity to interview each person identified as Designated Editorial Staff before they are hired pursuant to this Paragraph VII;
 2. allowing Facts and Comparisons to inspect the personnel files and other documentation relating to the Designated Editorial Staff, to the extent permissible under applicable laws, before they are hired pursuant to this Paragraph VII;
 3. not offering any incentive to decline employment with Facts and Comparisons;
 4. not interfering with any negotiations by Facts and Comparisons to employ any Designated Editorial Staff;
 5. removing any contractual impediments with Defendants that may deter any Designated Editorial Staff from accepting employment with Facts and Comparisons and assigning any confidentiality agreements or restrictions, except as to information related solely to products not transferred to Facts and Comparisons and any non-compete agreements; and
 6. vesting all pension rights, current and accrued, of any Designated Editorial Staff as of the date of transition to employment with Facts and Comparisons.
- H. Defendants shall terminate the Transitional Editorial Agreement no later than two (2) years after the three-month period described in Paragraph VII.D, unless Facts and Comparisons and Defendants agree to terminate it earlier.
- I. During the period beginning on the termination of the Shared Editorial Agreement until two (2) years after the termination of the Transitional Editorial Agreement, Defendants shall not solicit for employment any Facts and Comparisons' Editorial Staff employee or

other personnel employed by Facts and Comparisons engaged in editorial functions, unless and until such employee's employment by Facts and Comparisons is terminated, either by the employee or Facts and Comparisons.

- J. Defendants shall not enter into or modify any arrangement or agreement relating to the provision of services to Facts and Comparisons described in the Shared Editorial Agreement or the Transitional Editorial Agreement, without the prior approval of the Plaintiff, in its sole discretion.
- K. The Shared Editorial Agreement shall provide, among other things, that:
1. The cut-off day and time for data to be entered into NDDF and MDDB shall be the same day and time for similarly updated products;
 2. Defendant FDB shall give to Facts and Comparisons, within two business days of receipt by Defendant FDB, copies of all materials used by Defendants' Editorial Staff to update and populate the NDDF and MDDB including, but not limited to, all manufacturer and government inserts or documents, human clinical trials, case reports, and meeting abstracts; PROVIDED, HOWEVER, that if such materials are received by Defendant FDB pursuant to a subscription or other arrangement, Defendant FDB shall either get for Facts and Comparisons or facilitate Facts and Comparisons receiving a similar subscription or arrangement for such materials if Facts and Comparisons cannot get the subscription or other arrangement from the same source on the same schedule and on substantially similar terms and conditions, including price, as Defendant FDB.

3. Defendant FDB shall give to Facts and Comparisons, promptly upon the reasonable request of Facts & Comparison (but in no event more frequently than once each calendar quarter) a list of all publicly available references, other than those provided in Paragraph VII.H.2., above, used by Defendants' Editorial Staff to update and populate the NDDF and MDDB;
4. Defendant FDB shall give to Facts and Comparisons, monthly, all training information, protocols and contact information used by the Editorial Staff to update and populate the MDDB for Facts and Comparisons customers, including names, addresses and telephone numbers of persons from whom the information is obtained;
5. Defendant FDB shall notify and consult with Facts and Comparisons concerning all changes in operations of the Editorial Staff relating to the MDDB including changes in protocols to the updating of the MDDB for Facts and Comparisons customers, technology modifications (software and hardware), and the training, hiring, transfer or loss of any of Defendant's Editorial Staff personnel;
6. Defendant FDB shall grant Facts and Comparisons the right to visit, observe and consult with the Defendant's Editorial Staff at any time including, but not limited to, participating in meetings by and between the Editorial Staff, so long as it does not interfere with the normal operations of the Editorial Staff or new product development by Defendant FDB;
7. Defendant FDB shall notify Facts and Comparisons immediately if any Facts and Comparisons customer contacts the Editorial Staff for any reason and any Facts

and Comparisons customer contact shall be referred to the appropriate Facts and Comparisons customer service representative;

8. Defendant FDB shall maintain the viability and effectiveness of the Editorial Staff and each of the editorial functions that contribute to the MDDB.

L. The purpose of this Paragraph VII is to maintain an uninterrupted and accurate flow of information and data into the databases and to customers. The purpose is also to provide sufficient time and means to transition from the Shared Editorial Agreement into an arrangement whereby Defendants and Facts and Comparisons are either completely independent competitors in the Integratable Drug Information Database market or participate in an independent joint venture, that has received the prior approval of the Plaintiff, for the receipt of information and data necessary to create the drug information databases.

B. Pursuant to the Monitor agreement with Mr. Shermer, Defendants shall grant the following powers, duties, authorities and responsibilities to the Monitor appointed pursuant to subparagraph A of this Paragraph:

1. The Monitor shall have the power and authority to monitor Defendants' compliance with the terms of Paragraphs II through X of this Final Order.
2. The Monitor shall serve for such time as is necessary to monitor Defendants' compliance with the provisions of Paragraphs II through X of this Final Order.

PROVIDED, HOWEVER, the term of the Monitor shall continue until the later of:

- a. sixty (60) days after the conclusion or termination of the Transition Services Agreement or other similar transition services agreement;
 - b. sixty (60) days after the conclusion or termination of the Shared Editorial Agreement or similar shared editorial agreement; or
 - c. sixty (60) days after the conclusion or termination of the Transitional Editorial Agreement or similar transitional editorial agreement.
3. The Monitor shall have full and complete access, subject to any legally recognized privilege of Defendants, to Defendants' personnel, books, records, documents, facilities and technical information relating to the APA Assets, or to any other relevant information relating to Defendant FDB's products, as the Monitor may reasonably request. Defendants shall cooperate with any reasonable request of the Monitor. Defendants shall take no action to interfere with or impede the Monitor's ability to monitor Defendants' compliance with this Final Order.

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2. what Defendants have done to maintain the APA Assets as required by this Final Order; and
 3. any other information that is requested by the Court or the Plaintiff in determining whether Defendants are complying with the terms of this Final Order.
- E. The Monitor may be the same person appointed as the Divestiture Administrator pursuant to Paragraph X of this Final Order.
- F. In the event that Mr. Shermer ceases to be the Monitor or if the Plaintiff determines that the Monitor has ceased to act or failed to act diligently, a substitute Monitor, selected by the Plaintiff and subject to the consent of the Defendants, which consent shall not be unreasonably withheld, shall be appointed by the Court. If Defendants have not opposed, in writing, including the reasons for opposing, the selection of any proposed Monitor within ten (10) days after receipt of written notice by the staff of the Plaintiff to Defendants of the identity of any proposed Monitor, Defendants shall be deemed to have consented to the selection of the proposed Monitor. Within ten (10) days after appointment of the new Monitor, Defendants shall execute an agreement that, subject to the prior approval of the Plaintiff, in its sole discretion, confers on the new Monitor all rights and powers necessary to permit the new Monitor to monitor Defendants' compliance with the terms of this Final Order, including, but not limited to those rights and powers listed in Paragraph VIII.B., above, and listed in the Monitor Agreement at Exhibit F to this Final Order.

IX. Disgorgement of Profits

IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT:

- A. Not later than three (3) days after entry of this Final Order, Defendants shall pay to an escrow fund, to be identified by the Plaintiff to the Defendants, a sum for disgorgement of profits equal to \$19,000,000 (nineteen million and 00/100 dollars), until it can be distributed *pro rata* to eligible parties alleging harm, including some or all of the plaintiffs in *J.B.D.L. Corp. v. The Hearst Trust et al.*, Civil 1:01CV00870 or other related class action lawsuits, pursuant to a settlement plan, approved by the Plaintiff and this Court, that is fair, reasonable and adequate, provided, however, none of the disgorgement funds shall be used to pay attorney fees.
- B. Disgorgement or restitution of \$19,000,000 already paid by Defendants into an escrow fund for purposes of settling the class action lawsuits relating to claims by eligible parties alleging harm from the Acquisition and distributed pursuant to a settlement plan, approved by the Plaintiff, whose approval shall not be unreasonably withheld, and this Court, of the class action lawsuits relating to claims by plaintiffs alleging harm from the Acquisition, shall satisfy the obligations of Paragraph IX.A.
- C. Upon a motion by Plaintiff, if Defendants have not divested pursuant to Paragraph III of this Final Order, Defendants shall pay a sum of \$30,000 per day in additional disgorgement to the above-stated escrow fund or other escrow fund designated by Plaintiff, beginning on the fourth day after entry of this Final Order and continuing until Defendants divest pursuant to this Final Order. Such additional disgorgement paid pursuant to this Paragraph IX.C. shall not be used as a setoff for or subsumed into the

money already paid by Defendants into an escrow fund for purposes of settling the class action lawsuits relating to claims by eligible parties alleging harm from the Acquisition.

X. Failure to Divest and Divestiture Administrator

IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT:

- A. If Defendants have not divested pursuant to Paragraph III of this Final Order, upon a motion by Plaintiff, Defendants shall not object to a penalty of up to \$11,000 per day for failing to divest in a timely manner.
- B. If Defendants have not divested pursuant to Paragraph III of this Final Order, upon a motion by the Plaintiff, the Court shall appoint a Divestiture Administrator selected by the Plaintiff and subject to the consent of the Defendants, which consent shall not be unreasonably withheld, to divest the Divestiture Asset Package, to enter into contracts in a form similar to the APA, subject to modification by the Plaintiff and approval by the Court, and to perform this divestiture consistent with the purpose in Paragraph III.C.
- C. If a Divestiture Administrator is appointed by the Court pursuant to Paragraph X.B., Defendants shall consent to the following terms and conditions regarding the Divestiture Administrator's powers, duties, authority, and responsibilities:
 - 1. The Divestiture Administrator shall be a person with experience and expertise in acquisitions and divestitures. If Defendants have not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Administrator within ten (10) days after receipt of written notice by the staff of the Plaintiff to Defendants of the identity of any proposed Divestiture Administrator,

Defendants shall be deemed to have consented to the selection of the proposed Divestiture Administrator. The Divestiture Administrator may be the same person or entity as the Monitor appointed pursuant to Paragraph VIII.

2. Subject to the prior approval of the Plaintiff, at Plaintiff's sole discretion, the Divestiture Administrator shall have the exclusive power and authority to divest the Court-approved Asset Package.
3. Within ten (10) days after appointment of the Divestiture Administrator, Defendants shall execute an agreement that, subject to the prior approval of the Plaintiff, in its sole discretion, transfers to the Divestiture Administrator all rights and powers necessary to permit the Divestiture Administrator to effect the divestitures, and to obtain the licenses and transitional agreements required by this Final Order.
4. The Divestiture Administrator shall have twelve (12) months from the date the Plaintiff approves the agreement described in Paragraph C.3. to accomplish the divestiture and obtain the licenses, which shall be subject to the prior approval of the Plaintiff, in its sole discretion. If, however, at the end of the twelve-month period the Divestiture Administrator has submitted a plan of divestiture or believes that divestiture and licensing can be achieved within a reasonable time, the divestiture period may be extended by the Court upon motion by the Plaintiff;
5. The Divestiture Administrator shall have full and complete access, subject to any legally recognized privilege of Defendants, to the personnel, books, records and facilities related to the Court-approved Asset Package or to any other relevant

information, as the Divestiture Administrator may request. Defendants shall develop such financial or other information as the Divestiture Administrator may request and shall cooperate with the Divestiture Administrator. Defendants shall take no action to interfere with or impede the Divestiture Administrator's accomplishment of the divestiture. Any delays in divestiture caused by Defendants shall extend the time for divestiture under this Paragraph in an amount equal to the delay as determined by the Court.

6. The Divestiture Administrator shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Plaintiff, but shall divest expeditiously at no minimum price. The divestiture and licensing shall be made only to an acquirer that receives the prior approval of the Plaintiff, in its sole discretion, and the divestiture and licensing shall be accomplished only in a manner that receives the prior approval of the Plaintiff, in its sole discretion; provided however, if the Divestiture Administrator negotiates binding contracts with more than one acquiring entity, and if the Plaintiff determines to approve more than one such acquiring entity, the Divestiture Administrator shall divest to the acquiring entity selected by Defendants from among those approved by the Plaintiff; provided further, however, that Defendants shall select such entity within five (5) days of receiving written notification of the Plaintiff's approval.
7. The Divestiture Administrator shall serve, without bond or other security, at the cost and expense of Defendants, on such reasonable and customary terms and

conditions as the Plaintiff or the Court may set. The Divestiture Administrator shall have the authority to employ, at the cost and expense of Defendants such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Administrator's duties and responsibilities. The Divestiture Administrator shall account for all monies derived from the divestiture and all expenses incurred. After approval by this Court of the account of the Divestiture Administrator, including fees for his or her services, all remaining monies shall be paid at the direction of the Defendants, and the Divestiture Administrator's power shall be terminated. The Divestiture Administrator's compensation shall be based at least in significant part on a commission arrangement contingent on the Divestiture Administrator's completing the divestiture and granting the licenses as required by this Final Order.

8. Defendants shall indemnify the Divestiture Administrator and hold the Divestiture Administrator harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Administrator'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 liabilities, losses,

9. If the Divestiture Administrator ceases to act or fails to act diligently, a substitute Divestiture Administrator shall be appointed in the same manner as provided in Paragraph X of this Final Order.
 10. The Court may on its own initiative or at the request of the Divestiture Administrator issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture and other relief required by this Final Order.
 11. In the event that the Divestiture Administrator determines that he or she is unable to accomplish the divestiture and other relief required by this Final Order in a manner consistent with the Plaintiff's purpose as described in Paragraph III, the Divestiture Administrator may divest and license additional assets of the Defendants as necessary to achieve the remedial purposes of this Final Order.
 12. The Divestiture Administrator shall have no obligation or authority to operate or maintain any assets of the Defendants.
 13. The Divestiture Administrator shall report in writing to the Plaintiff and Defendants every sixty (60) days concerning the Divestiture Administrator's efforts to accomplish the divestiture and to obtain the other relief required by this Final Order.
- D. If divestiture is required pursuant to this Paragraph X, Defendants shall provide, cause to be provided, or reimburse the Acquirer for providing to Key Defendants' Employees financial incentives to accept employment with the Acquirer in the form of a bonus no less than 35 percent of the base salary (together with the amount of any social security,

unemployment and similar taxes imposed upon the employer by applicable law with respect to such bonus) for each Key Defendants' Employee (in addition to any other bonus or incentive payment made to Key Defendants' Employees during the normal course of business). This bonus payment shall be conditional upon the Key Defendants' Employee accepting a position with the Acquirer and remaining employed with the Acquirer for a period of at least twelve (12) months. One-half of the bonus shall be paid upon hire by the Acquirer and the remainder shall be paid immediately after twelve (12) months of employment with the Acquirer.

XI. Prior Notice

IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT, for a period commencing on the date of entry of this Final Order and continuing for ten (10) years, Defendants shall not, without providing advance written notification to the Plaintiff, acquire, directly or indirectly, through subsidiaries or otherwise, any ownership, leasehold, or other interest, in whole or in part, in any of the APA Assets divested pursuant to Paragraph III, or any of the Court-approved Asset Package divested pursuant to Paragraph X of this Final Order.

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 (hereinafter referred to as "the Notification"), 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 Federal Trade Commission, notification need

not be made to the United States Department of Justice, and notification is required only of Defendants and not of any other party to the transaction. Defendants shall provide the Notification to the Plaintiff 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 Plaintiff make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Defendants shall not consummate the transaction until thirty (30) days after submitting such additional information or documentary material. Early termination of the waiting periods in this Paragraph may be requested and, where

detailed description of all plans and the implementation of the transfer of the APA Assets to Facts and Comparisons and the implementation of the Shared Editorial Agreement, and copies, other than of privileged materials, of all written communications, internal memoranda, and reports and recommendations relating thereto. The final compliance report required by this Paragraph XII.A. shall include a statement that the Transition Services Agreement has been accomplished.

- B. One year from the date of entry of this Final Order and annually thereafter until the Order terminates, Defendants shall file verified written reports with the Plaintiff setting forth in detail the manner and form in which the Defendants have complied and are complying with this Final Order.
- C. From the date of entry of this Final Order until the earlier of the Plaintiff's approval of the Joint Venture Request pursuant to Paragraph VII.B. or the termination of the Transitional Editorial Agreement, Defendant FDB shall maintain a log, which it shall supply to Plaintiff upon request, of all meetings, or substantive discussions and contacts of Defendant FDB's Editorial Staff:
 - 1. with FDB personnel, in which Facts and Comparisons personnel did not participate, concerning new product development containing data from the Editorial Staff or enhancements or improvements to the existing NDDF and related products, including in such logs the names and positions of the attendees, the date, the approximate duration and the subject matter of the meeting, discussion or contact;

2. with customers of Defendant FDB and Facts and Comparisons, including indirect purchasers, including in such logs the names and positions of the persons involved, the date, the reason for the contact and the resolution of the issue; and
3. with Facts and Comparisons' sales, marketing and customer support staff, including in such logs the names and positions of the persons involved, the date, the reason for the contact and the resolution of the issue.

XIII. Change in Corporation Affecting Compliance

IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT Defendants shall notify the Plaintiff at least thirty (30) days prior to any proposed change in the Defendants, such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation, that may affect compliance obligations arising out of this Final Order.

XIV. Access to Information

IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT,

- D. For the purpose of determining or securing compliance with this Final Order, and subject to any legally recognized privilege, and upon written request with reasonable notice to Defendants, Defendants shall permit any duly authorized representative of the Plaintiff:
1. Access, during office hours and in the presence of counsel, to all facilities and access to inspect and copy all non-privileged books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession

or under the control of Defendants relating to any matter contained in this Final Order; and

2. Upon five (5) days' notice to Defendants and without restraint or interference from them, to interview officers, directors, or employees of Defendants, who may have counsel present, regarding any such matters.
- E. No information or documents obtained by the means provided in this Paragraph XIV shall be divulged by the Plaintiff to any person other than an authorized representative of the Plaintiff, except in the course of legal proceedings to which the Plaintiff is a party, or for the purpose of securing compliance with this Final Order, or as otherwise required by law.
- F. If at the time information or documents are furnished by Defendants to the Plaintiff, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and the Defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then the Plaintiff shall give Defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding.

XV. Retention of Jurisdiction

IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT this Court retains jurisdiction to enable any party to this Final Order to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this

Final Order, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XVI. Expiration of Final Order

IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT unless this Court grants an extension, this Final Order shall expire ten (10) years from the date of its entry.

XVII. Public Interest Determination

IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT entry of this Final Order is in the public interest.

Date: _____

**Thomas Penfield Jackson
United States District Judge**

CONFIDENTIAL EXHIBIT A

Revised Asset Purchase Agreement by and among First DataBank, Inc., and Lippincott Williams & Wilkins, Inc. d/b/a Facts and Comparisons, and Lippincott-Raven Medical, Ltd, dated November 9, 2001

[REDACTED]

CONFIDENTIAL EXHIBIT B

DESIGNATED EDITORIAL STAFF

[REDACTED]

FDB is a wholly owned subsidiary of The Hearst Corporation. Facts and Comparisons is a business entity within the International Health and Science Division of Wolters Kluwer, NV. The lawsuit which resulted in the court order is named *Federal Trade Commission v. The Hearst Corporation et al.* A copy of the complaint and the final order is attached and also can be found at www.ftc.gov[with URL] or at www.firstdatabank.com [with URL].

Sincerely,

[Joseph Hirschman or current name of President of
First DataBank]
President
First DataBank

cc: [Steven K. Hebel or current name of
President of Facts and Comparisons]

EXHIBIT D

NOTICE

Facts and Comparisons Owns the MDDB Product Line

Pursuant to a federal court order, First DataBank (“FDB”) has sold to Facts and Comparisons the Medi-Span business that it acquired in 1998. Accordingly, all customers who had been receiving MDDB products from FDB will now receive them from Facts and Comparisons. Facts and Comparisons will provide all customer support, and sales services regarding MDDB products. Facts and Comparisons is prepared to offer MDDB integrated drug database products to both current and new customers.

Questions about MDDB products should be addressed to:

Robert E. Brown
Director of Sales, Marketing and Customer Service
Facts and Comparisons
1-800-223-0554 ext. 2196 or 314-216-2196
rbrown@drugfacts.com

FDB is required to ensure that the transition of the MDDB product line to Facts and Comparisons preserves the integrity, accuracy and timeliness of the MDDB products. FDB will fulfill its responsibilities by transferring to Facts and Comparisons all of the data systems related to MDDB products and knowledgeable employees to operate those systems. Until Facts and Comparisons has developed its own production system, however, FDB will continue to provide production services for the MDDB products to Facts and Comparisons. In addition, FDB is required to supply to Facts and Comparisons, for two or more years, data for the MDDB drug information database that is just as timely and accurate as the data that is in FDB’s NDDF drug information database.

You should have complete confidence that the transition of the MDDB products will preserve their integrity. In addition to the commitment of FDB to make this transition faultless, a court ordered Monitor will continuously review FDB’s compliance with its obligations and United States Federal Trade Commission has the power to enforce the court order.

FDB is a wholly owned subsidiary of The Hearst Corporation. Facts and Comparisons is a business entity in the International Health and Science Division of Wolters Kluwer, NV. The lawsuit which resulted in the court order is named *Federal Trade Commission v. The Hearst Corporation et al*

EXHIBIT E

[First DataBank letterhead]

[date]

[Name of customer]

Attention:[name of contact person at customer]

[Address of contact person at customer]

[telephone number of contact person]

Dear [contact person]:

Pursuant to a federal court order, First DataBank (“FDB”) is required to allow its customers to terminate their contracts or amendments for NDDF products after giving FDB a thirty day notice of termination. Accordingly, you have a right beginning on the day you receive this letter and ending one year later to terminate your contract or currently existing amendments to your contract with us regardless of the termination date specified in that contract or

EXHIBIT F

**MONITOR AGREEMENT BETWEEN DEFENDANTS AND RICHARD SHERMER
DATED NOVEMBER 2, 2001**

CONFIDENTIAL EXHIBIT G

**PRICE TERMS FOR MONITOR AGREEMENT BETWEEN DEFENDANTS AND
RICHARD SHERMER DATED NOVEMBER 2, 2001**

[REDACTED]