

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Jon Leibowitz, Chairman
J. Thomas Rosb
Edith Ramirez
Julie Brill
Maureen K. Ohlhausen

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In the Matter of)	
)	
JOHNSON & JOHNSON,)	Docket No. C-
a corporation.)	
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)	

DECISION AND ORDER
[Public Record Version]

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition of Synthes, Inc. ("Synthes") by Johnson & Johnson ("Respondent J&J" and Respondent J&J having thereafter furnished the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent J&J 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 J&J, its attorney and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), containing an admission by Respondent J&J of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent J&J 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 waives 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 J&J has violated the said Act, 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 J&J is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey with its headquarters address located at One Johnson & Johnson Plaza, New Brunswick, New Jersey 08933.

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

ORDER

I.

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

- A. “J&J” means Johnson & Johnson, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Johnson & Johnson (including DePuy Orthopaedics, Inc., and Synthes, Inc. after the Acquisition Date), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Synthes” means Synthes, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its headquarters address located at 1302 Wrights Lane East, West Chester, PA 19380.
- C. “Commission” means the Federal Trade Commission.
- D. “Biomet” means Biomet, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its headquarters address located at 56 East Bell Drive, Warsaw, IN 46581-0587.
- E. “Acquisition” means Respondent J&J’s acquisition of Synthes.
- F. “Acquisition Date” means the date on which the Acquisition is consummated.
- G. “Acquirer” means
 - 1. an entity that is specifically identified in this Order to acquire particular assets that Respondent J&J 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 Commission’s determination to make this Order final; or

2. an entity that receives the prior approval of the Commission to acquire particular assets that Respondent & J is required to assign, grant, license, divest, transfer, deliver, or otherwise convey pursuant to this Order
- H. "Cloned Form" means a program (e.g., an operating system or an application program) that has functions and behavior identical to another program but that does not contain source code from that program. The Cloned Form of the software will include a fully paid-up license or sub-license to the appropriate license that come with the software
- I. "Confidential Business Information" means competitively sensitive, proprietary, and all other information, solely relating to the DVR Business, that is not in the public domain, and includes, but is not limited to, information relating to the research, development, manufacturing, marketing, or sale of the DVR, including the terms of the Remedial Agreement, all customer lists, price lists, contracts, cost information, technologies, processes, or other trade secrets related to the DVR and the DVR Business. PROVIDED, HOWEVER that "Confidential Business Information" shall not include (1) information that subsequently falls within the public domain through no violation of this Order or any confidentiality agreement with respect to such information by Respondent & J or (2) information that Synthes can demonstrate it lawfully obtained without the assistance of Respondent & J prior to the Acquisition Date.
- J. "Designated Employee" means a Person or Person filling the job description (if the Person listed is no longer employed at that particular job) listed on Non-Public Appendix B to this Order.
- K. "Development" means all preclinical and clinical device development activities, including test method development and stability testing, formulation, process development, manufacturing scale-up, development-stage manufacturing, quality assurance/quality control development, statistical analysis and reporting, 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 DVR (including any governmental price or reimbursement approvals), and regulatory affairs activities related to the foregoing. "Develop" means to engage in Development.
- L. "Distributor" means
1. any current independent distributor of DVR in the United States, or
 2. an independent distributor that may become or becomes a distributor of DVR in the United States by virtue of interviewing and hiring a Designated Employee.
- M. "DVR" means the DR® Anatomic Volar Plating System owned by Respondent & J prior to the Effective Date including but not limited to, the plates, screws, pegs, cases and the

instruments, tools, or products used in connection with the implantation of the plates, screws, and pegs.

N. "DVR Business" means all of Respondent J&J's assets, tangible and intangible, businesses and goodwill, Related To the search, Development, manufacture, distribution, marketing or sale of DVR in the United States including, without limitation, the following:

1. all DVR Intellectual Property;
2. all DVR manufacturing technology;
3. all rights to the name Hand Innovations, and all trademarks, trade name, and logos Related To Hand Innovations;
4. all instruments, tools, or products used in connection with the implantation of or otherwise Related To the DVR;
5. all DVR scientific and regulatory material;
6. all DVR manufacturing equipment, to the extent owned by Respondent J&J;
7. to the extent Related To the DVR, all of Respondent J&J's rights, titles and interests in, and to, the contracts entered into in the ordinary course of business with customers, suppliers, personal property lessors, personal property lessees, licensors, licensees, consignors, and consignees, in each case that are Third Parties, including, without limitation, all of Respondent J&J's contracts with any Third Party to the extent Related To the supply of components used in the manufacture of the DVR; PROVIDED, HOWEVER, that Respondent J&J's contracts with its Distributors are excluded.
8. all inventory including raw materials, packaging materials, work-in-process and finished goods, in each case to the extent consisting of, or intended for use in the manufacture of, the DVR;
9. all commitments and orders for the purchase of goods that have not been shipped, to the extent such goods are, or are intended for use in the manufacture of, the DVR;
10. all rights under warranties and guarantees, express or implied, with respect to the DVR;
11. all items of prepaid expenses, to the extent Related To the DVR; and
12. all books, records and files Related To the foregoing, or to the DVR.

PROVIDED, HOWEVER, that "DVR Business" does not include any portion of any of the foregoing assets, businesses and goodwill that does not Relate To the DVR;

PROVIDED FURTHER, HOWEVER, that "DVR Business" does not include assets or groups of assets specifically excluded, and listed at Schedule 2.02(b) of the J&J/Biomet Divestiture Agreement

PROVIDED FURTHER, HOWEVER, that except as provided to the Airer for transition purposes, or as part of the Remedial Agreement, or otherwise provided for in this Order, "DVR Business" shall not include any of the following (a) (

- k. all rights to limit the use or disclosure ~~the~~ of Trade Dress, and the modifications or improvements to such intellectual property; and
2. subject to any mutually agreed covenant not to sue between Respondent & J and Acquirer, rights to sue and recover damages or obtain injunctive relief for infringement, dilution, misappropriation, violation or breach of any of the foregoing.
- P. "DVR Manufacturing Copyrights" means copyrights in all process development data and reports Relating To the research and development of the DVR, or of any materials used in the research, Development, manufacture, manufacturing records, manufacturing processes, and supplier lists of or for the DVR; all copyrights in data contained in laboratory notebooks Relating To the DVR; all copyrights in analytical and quality control data Relating To the DVR; and all correspondence with governmental agencies Relating To the foregoing.
- Q. "DVR Sales Copyrights" means rights to all original works of authorship of any kind directly Related To the ~~sa~~ of the DVR, and any registrations and applications for registrations thereof including, but not limited to, all such ~~hts~~ with respect to:
1. all promotional, marketing, sales, and advertising materials, educational and training materials for the sales force, and sales forecasting models;
 2. marketing or sale of the DVR including copyrights in all raw data, statistical programs developed (or modified in any manner) material to the use or furtherance thereof (other than through user preferences) to analyze research data, market research data, market intelligence reports and statistical programs (if any) used for marketing and sales research; all such rights with respect to customer information; and
 3. records, including customer lists, sales forecast activity reports, vendor lists, and sales data.
- R. "Effective Date" means the date on which the divestitures, licensing, and assignments pursuant to Paragraph I or Paragraph M of this Order are consummated.
- S. "Girardet Facility" means that portion of the facility and offices located at Rue de Girardet 29, 2400 Le Locle, Switzerland, that is Related To the ~~VDR~~ Business consisting of, among other things, office, manufacturing, production, and packaging space for the DVR Business.
- T. "J&J/Biomet Divestiture Agreement" means the asset purchase agreement, together with all licenses, assignments, and other agreements entered into by Respondent & J and Biomet for the sale of the DVR B

- U. "Miami Facility" means that portion of the facility and offices located at 6303 Bie Lagon Drive, Miami, FL, that is Related to the DVR Business consisting of, among other things, office, and research and development space for the DVR Business.
- V. "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 Acquisition Date, and includes all reissues, additions, divisions, continuations, continuations-in-part, supplementary protection certificates, extensions and reexaminations thereof inventions disclosed therein, and all rights therein provided by international treaties and conventions.
- W. "Person" means any natural person, partnership, corporation, association, trust, joint venture, limited liability company, government, government agency, division, or department, or other business or legal entity.
- X. "Relating To" or "Related To" means pertaining in anyway to, and is not limited to that which pertains exclusively to or primarily to.
- Y. "Remedial Agreement" means the following:
1. the J&J/Biomet Divestiture Agreement if such agreement has not been rejected by the Commission pursuant to Paragraph I of this Order; and
 2. any agreement between Respondent & J and a 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, and all amendments, exhibits, attachments, agreements, and schedules thereto, Related To the relevant assets to be granted, licensed, delivered or otherwise conveyed, that have been approved by the Commission to accomplish the requirements of this Order.
- Z. "Software" means executable computer code and the documentation for such computer code, but does not mean data processed by such computer code.
- AA. "Third Party(ies)" means any Person other than Respondent & J, Synthes, or the Acquirer.
- BB. "Trade Dress" means the current trade dress of a particular product or Person including, without limitation, product packaging, logos, and the lettering of the product trade name, brand name, or corporate name.
- CC. "Trademark(s)" means all proprietary names or designations, trademarks, service marks, tradenames, and brand names, including registrations and applications for registration therefor (and all renewals, modifications, and extensions thereof) and all common law rights thereon, and the goodwill symbolized thereby and associated therewith.
- DD. "United States" means United States America.

EE. "Wrist Plating System" means

1. any plating system or implantable device used to achieve the reduction and/or fixation of any fracture of the distal portion of the radius bone; and
2. any instruments, tools, or products used in connection with the implantation of or otherwise Related To such system or device

FF. "Wrist Plating System Business" means any and all assets, tangible and intangible, businesses and goodwill, Related To the research, Development, manufacture, distribution, marketing or sale of a Wrist Plating System.

II. (Divestiture)

IT IS FURTHER ORDERED that:

- A. Within ten (10) days of the Acquisition Date, Respondent J&J shall divest the DVR Business absolutely and in good faith, to Biomet, pursuant to, and in accordance with, the J&J/Biomet Divestiture Agreement. The J&J/Biomet Divestiture Agreement (which shall include, among other things, the asset purchase agreement, a transition services agreement, the lease or assignment of a lease to the Miami Facility and the Gadget Facility, and licenses between Respondent J&J and Biomet) shall not vary or contradict, or be construed to vary or contradict, the terms of this Order, it being understood that nothing in this Order shall be construed to reduce any rights or benefits of Biomet, or to reduce any obligations of Respondent J&J under such agreements, and such agreements, if approved by the Commission, shall be incorporated by reference into this Order and made a part hereof.

PROVIDED, HOWEVER, that with respect to documents or other materials included in the DVR Business that contain information (a) that Related To both the DVR and to other products or businesses of Respondent J&J or (b) for which Respondent J&J has a legal obligation to retain the original copies, Respondent J&J shall be required to divest to the Acquirer only copies or, at its option, relevant excerpts of such documents and materials, but Respondent J&J shall provide the Acquirer access to the originals of such documents as necessary, it being a purpose of this proviso to ensure that Respondent J&J be required to divest itself completely of records or information that relates to products or businesses other than the DVR;

PROVIDED FURTHER, HOWEVER, that with respect to any contract or agreement included in the DVR Business that relates both to the DVR and to any other product, Respondent J&J may, concurrently with assigning such contract or agreement to the extent it relates to the DVR, retain its rights under such contract or agreement for purposes of such other product(s).

1. the scope of services, term, and price or costs for such services; and
 2. the option for the Acquirer to terminate a particular service in the United States:
 - a. at anytime, with prior notice not greater than thirty(30) days, without penalty or payment for the remainder of the original service period; and
 - b. without automatically terminating or incurring a penalty or additional cost for continuing, that particular service in another part of the world.
- D. Within ninety(90) days of the Effective Date, Respondent J&J shall transfer a Cloned Form of the TeamCenter, Agile, and EtQ software programs, together with all data belonging to the Acquirer, and resident on such programs, current as of such transfer date, in a manner that provides the Acquirer independent access to and control over such Cloned Form software programs.
- E. As of the Effective Date, Respondent J&J shall grant to the Acquirer direct access to data belonging to the Acquirer and resident on the TeamCenter, Agile, and EtQ software programs, pursuant to the Remedial Agreement and subject to non-disclosure agreements, until such time as the Acquirer notifies Respondent J&J and the Monitor that the Acquirer has validated the Cloned Form of the software programs with data belonging to the Acquirer, current as of the last transaction executed on Respondent J&J's versions of the Team

- a. attempted to settle the dispute between themselves, and
 - b. either engaged in arbitration and received an arbitrator's decision, or received a final court decision after all appeals.
- H. The purposes of this Paragraph I of the Order are: (1) to ensure that the Acquirer will have the intention and ability to produce and sell the DVR independently of Respondent J&J, and (2) to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

III . (Asset Maintenance)

IT IS FURTHER ORDERED that:

- A. Except in the course of performing its obligations under a Remedial Agreement or as expressly allowed pursuant to this Order, Respondent J&J shall not, and shall instruct its Distributors not to, interfere directly or indirectly, with the DVR Business of the Acquirer.

PROVIDED HOWEVER, that unless otherwise prohibited by the Order, nothing in this Paragraph II.A. shall prevent (a) Respondent J&J or its Distributors (i) from competing for contracts or for the business of suppliers, distributors, resellers, or customers; or (ii) from engaging in c

viability, and competitiveness of the DVR Business and shall use its best efforts to preserve the existing relationships with the following: suppliers, vendors, distributors, customers, governmental agencies, employees, and others having business relations with the DVR Business; Respondent J&J's responsibilities shall include, but are not limited to, the following:

- a. Respondent J&J shall provide the DVR 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 DVR Business;
- b. Respondent U shall continue, at least at their scheduled pace any additional expenditures for the DVR Business authorized prior to the date the Consent Agreement was signed by Respondent J&J including, but not limited to,

5. develop, sell, and manufacture the DVR consistent with past practices and/or as may be necessary to preserve the marketability, viability and competitiveness of the DVR Business pending divestiture.

C. The purpose of this Paragraph III is to maintain the full economic viability, marketability and competitiveness of the DVR Business until the Effective Date, to minimize any risk of loss of competitive potential for the DVR Business, and to prevent the destruction, removal, wasting deterioration, or impairment of the DVR Business, except for ordinary wear and tear

IV. (Confidentiality)

IT IS FURTHER ORDERED that:

A. Except in the course of performing its obligations under a Remedial Agreement, or as expressly allowed pursuant to this Order:

1. Respondent J&J shall not use, provide, disclose or otherwise make available directly or indirectly, any Confidential Business Information to any Person. Among other things, Respondent J&J shall not use such Confidential Business Information:

- a. to assist or inform Respondent J&J employees who develop, manufacture, solicit for sale, sell, or service Respondent J&J products that compete with the products divested, sold, or distributed pursuant to this Order including, but not limited to, the employees of the Wrist Plating System Business owned and operated by Synthes;
- b. to interfere with any suppliers, distributors, resellers or customers of the Acquirer;
- c. to interfere with any contracts divested, assigned, or extended to the Acquirer pursuant to this Order;
- d. to interfere in any other way with the Acquirer pursuant to this Order or with the DVR Business divested pursuant to this Order

2. Respondent J&J shall not disclose or convey Confidential Business Information, directly or indirectly, to any person except the Acquirer or other persons specifically authorized by the Acquirer to receive such information;

3. Respondent J&J shall not provide, disclose or otherwise make available directly or indirectly, any Confidential Business Information to the employees associated with the Synthes Wrist Plating System Business; and

4. Respondent J&J shall institute procedures and requirements to ensure that:

- a. Respondent J&J employees with access to Confidential Business Information do not provide, disclose or otherwise make available, directly or indirectly, any Confidential Business Information in contravention of this Order and
- b. Respondent J&J employees associated with the Synthes Wrist Fixating System do not solicit, access or use any Confidential Business Information that they are prohibited under this Order from receiving for any reason or purpose.

B. The requirements of this Paragraph M do not apply to Confidential Business Information that Respondent J&J demonstrates to the satisfaction of the Commission, in the Commission's sole discretion:

1. was or becomes generally available to the public other than as a result of a disclosure by Respondent J&J;
2. is necessary to be included in mandatory regulatory filings; PROVIDED, HOWEVER, that Respondent J&J shall make all reasonable efforts to maintain the confidentiality of such information in the regulatory filings;
3. was available, or becomes available to Respondent J&J on a non-confidential basis, but only if, to the knowledge of Respondent J&J, the source of such information is not in breach of a contractual, legal, fiduciary, or other obligation to maintain the confidentiality of the information;
4. is information the disclosure of which is consented to by the Acquirer;
5. is necessary to be exchanged in the course of consummating the Acquisition or the transactions under the Remedial Agreement;
6. is disclosed in complying with this Order;
7. is information the disclosure of which is necessary to allow Respondent J&J to comply with the requirements and obligations of the laws of the United States and other countries;
8. is disclosed in defending legal claims, investigations or enforcement actions threatened or brought against Respondent J

unauthorized use of Confidential Business Information of the

J&J's compliance with its obligations under the Order. Respondent J&J shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor Respondent J&J's compliance with the Order.

4. The Monitor shall serve without bond or other security, at the expense of Respondent J&J on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have authority to employ at the expense of Respondent J&J, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities. The Monitor shall account for all expenses incurred, including fees for services rendered, subject to the approval of the Commission.
 5. Respondent J&J shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including a reasonable fee of counsel and other reasonable 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, malfeasance, willful or wanton acts, or bad faith by the Monitor.
 6. The Monitor Agreement shall provide that within one (1) month from the date the Monitor is appointed pursuant to this paragraph, and every sixty (60) days thereafter, the Monitor shall report in writing to the Commission concerning performance by Respondent J&J of its obligations under the Order.
 7. Respondent J&J may require the Monitor and each of the Monitor's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; PROVIDED, HOWEVER, such agreement shall not restrict the Monitor from providing any information to the Commission.
- E. The Commission may, among other things, require the Monitor and each of the Monitor's consultants, accountants, attorneys and other representatives and assistants to sign an appropriate confidentiality agreement relating to Commission materials and information received in connection with the performance of the Monitor's duties.
- F. If the Commission determines th

2. Not later than ten (10) days after appointment of the substitute Monitor, Respondent J&J shall execute an agreement that, subject to the prior approval of the Commission, confers on the Monitor all the rights and powers necessary to permit the Monitor to monitor Respondent J&J's compliance with the relevant terms of the Order in a manner consistent with the purposes of the Order.
- G. The Commission may on its own initiative, or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Order.
- H. A Monitor appointed pursuant to this Order may be the same person appointed as the Divestiture Trustee pursuant to the relevant provisions of this Order.

VI. (Divestiture Trustee)

IT IS FURTHER ORDERED that:

- A. If Respondent J&J has not fully complied with the obligations as required by Paragraph II of this Order, the Commission may appoint a Divestiture Trustee to divest the VR Business, and enter any other agreements, assignments, and licenses in a manner that satisfies the requirements of this Order.

In the event

transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effectuate the divestitures required by this Order.

D. If a Divestiture

PROVIDED FURTHER, HOWEVER, that Respondent J&J 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 J&J, 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 J&J, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as 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 J&J, 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 J&J shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages,

materials and information received in connection with the performance of the Divestiture Trustee's duties.

- 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 VI.
- F. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request

such Designated Employee not to make any counteroffer to a Designated Employee, who receives a written offer of employment from the Acquirer or the Acquirer's Distributors, unless and until the Designated Employee has declined, in writing, the Acquirer's or Acquirer's Distributor's offer.

3. Respondent J&J shall, or where applicable, Respondent J&J shall instruct its Distributors, in a manner consistent with local labor laws:
 - a. to facilitate employment interviews between each Designated Employee and the Acquirer or the Acquirer's Distributors, including providing the names and contact information for such employees and allowing such employees reasonable opportunity to interview with the Acquirer or the Acquirer's Distributors and shall not discourage such employee from participating in such interviews;
 - b. to not interfere in employment negotiations between each Designated Employee and the Acquirer or the Acquirer's Distributors;
 - c. with respect to each Designated Employee who receives an offer of employment from the Acquirer or the Acquirer's Distributors:
 - (1) not to prevent, prohibit, or restrict, or threaten to prevent, prohibit, or restrict the Designated Employee from being employed by the Acquirer or the Acquirer's Distributors, and shall not offer any incentive to the Designated Employee to decline employment with the Acquirer or the Acquirer's Distributors including, but not limited to, the Acquirer or the Acquirer's Distributor offering to hire the Designated Employee;
 - (2) to cooperate with the Acquirer or the Acquirer's Distributors in effecting transfer of the Designated Employee to the employ of the Acquirer or the Acquirer's Distributors, if the Designated Employee accepts an offer of employment from the Acquirer or the Acquirer's Distributors;
 - (3) to eliminate any confidentiality restrictions that would prevent the Designated Employee who accepts employment with the Acquirer from using or transferring to the Acquirer or the Acquirer's Distributors any information relating to the manufacture and sale of the DVR; and
 - (4) unless alternative arrangements are agreed upon with the Acquirer or the Acquirer's Distributors, to retain the obligation to pay the benefits of any Designated Employee

PROVIDED, HOWEVER, that subject to the conditions of continued employment prescribed in this Order this Paragraph VI.A. shall not prohibit Respondent & J or Respondent & J's Distributors from continuing to employ any Designated Employee under the terms of such employee's employment as in effect prior to the date of the written offer of employment from the Acquirer or the Acquirer's Distributor to such employee.

PROVIDED, FURTHER, HOWEVER, that subject to the conditions of continued employment prescribed in this Order this Paragraph VI.A. shall not prohibit Respondent

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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 (herein 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 Commission, notification need not be made to the United States Department of Justice, and notification is required only of Respondent J&J and not of any other party to the transaction. Respondent J&J shall provide the Notification to the Commission at least thirty days prior to consummating the 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 documents or materials (within the meaning of 16 C.F.R. § 803.20), Respondent J&J

internal memoranda, and reports and recommendations concerning completing the obligations

- B. Beginning twelve (12) months 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 J&J 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. Respondent J&J 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 the Order and copies of all written communications to and from all persons Related To this Order. Additionally, Respondent J&J shall include in its compliance report whether or not it made any notifiable acquisitions pursuant to Paragraph VIII. Respondent J&J shall include a description of such acquisitions.

X. (Reorganization)

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

- A. dissolution of such Respondent;
- B. 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

XI. (Access)

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

XII. (Termination)

IT IS FURTHER ORDERED that this Order shall terminate ten (10) years after the date on which this Order becomes final.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED:

**CONFIDENTIAL EX HIBIT A
J&J/BIOMET DIVES TITUR E AGREEMENT**

[Redacted From the Public Record Version, But Incorporated By Reference]

CONFIDENTIAL EX HIBIT B

DESIGNATED EMPLOYEES

[Redacted From the Public Record Version, But Incorporated By Reference]

EXHIBIT C
MONITOR AGREEMENT

CONFIDENTIAL EXHIBIT C-1

COMPENSATION PROVISION
OF MONITOR AGREEMENT

[Redacted From the Public Record Version, But Incorporated By Reference]