

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS:

Joseph J. Simons, Chairman

Maureen K. Ohlhausen

Noah Joshua Phillips

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a portion of the outstanding voting securities of ADMA Biologics, Inc. (“ADM
Respondent’s proposed acquisition of Biotest US, Biotest US transferred or will
all of the aforementioned voting securities of ADMA to either The Biotest Divest
ADMA. Accordingly, ADMA’s voting securities will not be acquired or held
The Commission’s Bureau of Competition prepared and furnished to Respon
Complaint reflecting the foregoing transaction which it proposed to present to
for its consideration. f issued by the Commission, the Draft Complaint would
Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U
Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

Respondents and the Bureau of Competition executed an agreement (“Agreement Containing Consent Orders” or “Consent Agreement”) containing (1) an admission by Respondents

Republic of Germany), as grantor, and Eric Rosenbach, a U.S. citizen. The mailing address of The Biotest Divestiture Trust is c/o Eric Rosenbach, Trustee, 402 Norfolk St., Cambridge, Massachusetts 02139. The Trust Agreement for the Biotest Divestiture Trust is contained in Non-Public Appendix I of the Order.

5. The Commission has jurisdiction over the subject matter of this proceeding and over the Respondents, and the proceeding is in the public interest.

ORDER

I.

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

- A. “Respondents” means, individually and collectively: Grifols, S.A. and Grifols Shared Services North America, Inc.; their directors, officers, employees,

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- O. “Current Operating Condition” means that, as of the date of delivery to the Acquirer, the machine meets or exceeds all current operational, functional, and productive capabilities required to perform plasmapheresis.
- P. “Disposable Medical Supplies” means general medical products regularly used in the conduct of the Business of a Plasma Donor Center that are intended for one-time or temporary use (*e.g.*, gloves, needles, bandages, paper products, syringes, and wipes).
- Q. “Divestiture Trustee” means the trustee appointed by the Commission pursuant to Paragraph V of this Order.
- R. “Domain Name” means the domain name(s) (uniform resource locators), and registration(s) thereof, issued by any Person or authority that issues and maintains the domain name registration; *provided, however*, “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.
- S. “Government Entity” means any Federal, state, local, or non-U.S. government; any court, legislature, government agency, or government commission; or any judicial or regulatory authority of any government.
- T. “Fixtures and Equipment” means all furniture, fixtures, furnishings, machinery, equipment, supplies and other tangible personal property used or held for use in the operation of the Business of each of the Plasma Donor Center Divestiture Facilities respectively, or if leased, the Respondents’ leasehold interest therein.
- U. “Kedplasma” means (i) Kedplasma LLC, wholly-owned subsidiary of Kedrion S.p.a. and a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its executive offices and principal place of business located at Parker Plaza, 400 Kelby Street, Fort Lee, New Jersey 07024; or (ii) Kedrion S.p.a, a corporation organized, existing, and doing business under and by virtue of the laws of the Italian Republic with its registered

2. pursuant to which a Third Party provides any equipment necessary to the operation of the Business of the specified Plasma Donor Center Divestiture Facility to a Respondent; and
3. pursuant to which a Third Party provides any software necessary to the operation of the Business of the specified Plasma Donor Center Divestiture Facility to a Respondent.

provided, however, that where any such contract or agreement also relates to a Plasma Donor Center(s) that is being retained by the Respondents, a Respondent shall, at the Acquirer's option, assign or otherwise make available to the Acquirer all such rights under the contract or agreement as are related to the specified Plasma Donor Center Divestiture Facility, but concurrently may retain similar rights for the Plasma Donor Centers retained by the Respondents.

GG. "Plasma Donor Center Divestiture Agreement(s)" means the following:

1. *Plasma Center Purchase Agreement* by and between Kedplasma LLC and Biomat USA, Inc., dated June 18, 2018;
2. *Transition Services Agreement* by and between Kedplasma LLC and Biomat USA, Inc., dated June 18, 2018; and
3. all amendments, exhibits, attachments, agreements, and schedules attached to and submitted to the Commission with the foregoing listed agreement(s).

The Plasma Donor Center Divestiture Agreements are contained in Non-Public Appendix II.A. The Plasma Donor Center Divestiture Agreements that have been approved by the Commission to accomplish the requirements of this Order in connection with the Commission's determination to make this Order final and effective are Remedial Agreements.

HH. "Plasma Donor Center Divestiture Assets" means all rights, title, and interest in and to the Business of Respondents related to each of the Plasma Donor Center Divestiture Facilities, to the extent legally transferable and as such assets and rights are in existence as of the date the Respondents sign the Consent Agreement in this matter, and to be maintained by the Respondents in accordance with the Order to Maintain Assets until the Closing Date, including, without limitation, the following:

1. all rights to all of the leasehold interests in the real property at which the Plasma Donor Center Divestiture Facility is located and the building and improvements thereon;
2. all rights to all of the Plasma Donor Center Contracts;
3. all Fixtures and Equipment;
4. all Plasma Donor Center Approvals;
5. at the Acquirer's option, all Applicant Plasma in inventory as of Closing Date;

6. at the Acquirer's option, either (i) all plasmapheresis machines used or held for use in the operation of the Business at each respective Plasma Donor Center Divestiture Facility (which machines shall be delivered to the Acquirer in Current Operating Condition), or (ii) a license for an interim period to use all plasmapheresis machines used or held for use in the operation of the Business at each respective Plasma Donor Center Divestiture Facility (which machines shall be provided to the Acquirer in Current Operating Condition) for a time sufficient to allow the Acquirer to transition to the Acquirer's own plasmapheresis machines;
7. at least two (2) weeks supply (in the ordinary course of business) of Collection Materials at each Plasma Donor Center (each a "CD") to be provided to the Acquirer in Current Operating Condition for a time sufficient to allow the Acquirer to transition to the Acquirer's own Collection Materials;

provided, however, that in cases in which documents or other materials included in

approved by the Commission to accomplish the requirements of this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto.

- MM. “Third Party(ies)” means any non-governmental Person other than the following: a Respondent; or an Acquirer of particular assets or rights pursuant to this Order.
- NN. “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 a Respondent; *provided, however*, “Website” shall not include the following: (1) content owned by Third Parties and other Product Intellectual Property not owned by a Respondent that are incorporated in such Website(s), such as stock photographs used in the Website(s), *except* to the extent that a Respondent can convey its rights, if any, therein; or (2) content unrelated to any of the Plasma Donor Center Divestiture Facilities.

II.

IT IS FURTHER ORDERED that:

- A. Not later than thirty (30) days after the Order Date, Respondents shall divest the Plasma Donor Center Divestiture Assets, absolutely and in good faith, to Kedplasma pursuant to, and in accordance with, the Plasma Donor Center Divestiture Agreements (which agreements shall not limit or contradict, or be construed to limit or contradict, the terms of this Order, it being understood that this Order shall not be construed to reduce any rights or benefits of Kedplasma or to reduce any obligations of Respondents under such agreements), and each such agreement, if it becomes a Remedial Agreement related to the Plasma Donor Center Divestiture Assets is incorporated by reference into this Order and made a part hereof;

provided, however, that if Respondents have divested the Plasma Donor Center Divestiture Assets to Kedplasma prior to the Order Date, and if, at the time the Commission determines to make this Order final and effective, the Commission notifies Respondents that Kedplasma is not an acceptable purchaser of any of the Plasma Donor Center Divestiture Assets, then Respondents shall immediately rescind the transaction with Kedplasma, in whole or in part, as directed by the Commission, and shall divest the Plasma Donor Center Divestiture Assets within one hundred eighty (180) days after the Order Date, absolutely and in good faith, at no minimum price, to an Acquirer that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission;

provided further, that if Respondents have divested the Plasma Donor Center Divestiture Assets to Kedplasma prior to the Order Date, and if, at the time the Commission determines to make this Order final and effective, the Commission notifies Respondents that the manner in which the divestiture was accomplished is not acceptable, the

Commission may direct Respondents, or appoint a Divestiture Trustee, to effect such modifications to the manner of divestiture of the Plasma Donor Center Divestiture Assets to Kedplasma (including, but not limited to, entering into additional agreements or arrangements) as the Commission may determine are necessary to satisfy the requirements of this Order.

B. Prior to the Closing Date, Respondents shall provide the Acquirer with the opportunity to review all contracts or agreements that are Plasma Donor Center Contracts for the purposes of the Acquirer’s determination whether to assume such contracts or agreements.

C. Prior to the Closing Date, Respondents shall secure all consents and waivers from all Third Parties that are necessary to permit Respondents to divest the Plasma Donor Center Divestiture Assets to an Acquirer, and to permit the Acquirer to continue the Business of

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- c. applicable Law;
5. not disclose or convey any Plasma Donor Center Confidential Business Information, directly or indirectly, to any Person except (i) the Acquirer, (ii) other Persons specifically authorized by that Acquirer or staff of the Commission to receive such information, (iii) the Commission, or (iv) the Monitor (if any has been appointed) and *except* to the extent necessary to comply with applicable Law;
6. not provide, disclose or otherwise make available, directly or indirectly, any Plasma Donor Center Confidential Business Information to the employees associated with the Plasma Donor Centers that are being retained by the Respondents; and
7. institute procedures and requirements to ensure that the above-described employees:
 - a. do not provide, disclose or otherwise make available, directly or indirectly, any Plasma Donor Center Confidential Business Information in contravention of this Order to Maintain Assets; and
 - b. do not solicit, access or use any Plasma Donor Center Confidential Business Information that they are prohibited from receiving for any reason or purpose.

E. Respondents shall:

1. not later than ten (10) days after a request from the Acquirer, provide the Acquirer with the Plasma Donor Center Employee Information;
2. for a period of twelve (12) months after the Closing Date, provide the Acquirer with the opportunity to enter into employment contracts with the employees that work in the locations of each of the Plasma Donor Center Divestiture;
3. until the Closing Date, provide all of the above-described employees with reasonable financial incentives to continue in their positions consistent with past practices and/or as may be necessary to preserve the marketability, viability, and competitiveness of the Business related to each of the Plasma Donor Center Divestiture Facility. Such incentives shall include a continuation of all employee compensation and benefits offered by a Respondent until the Closing Date(s). ..

- d. ensure the assets related to each Plasma Donor Center Divestiture Facility are provided to the Acquirer without disruption, delay, or impairment of any regulatory approval processes related to the Business associated with each Plasma Donor Center Divestiture Facility; and
 2. Respondents shall not sell, transfer, encumber, or otherwise impair the Plasma Donor Center Divestiture Assets (other than in the manner prescribed in this Order).
- G. For a period of ten (10) years beginning on the Order Date, Respondents shall not, directly or indirectly, through subsidiaries, partnerships or otherwise, without providing prior written notification to the Commission:
1. acquire any ownership or leasehold interest in any facility that has operated as a Plasma Donor Center within (6) months prior to the date of such proposed acquisition within any of the Relevant Geographic Markets; or
 2. acquire any Ownership Interest in any entity that owns any interest in or operates a Plasma Donor Center, or owned any interest in or operated any Plasma Donor Center within six (6) months prior to such proposed acquisition in any of the Relevant Geographic Markets;

provided however, that advance written notification shall not apply to the construction of new facilities by Respondents or the acquisition of or leasing of a facility that has not operated as a Plasma Donor Center within six (6) months prior to Respondents' offer to purchase or lease.

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 Commission, notification need not be made to the United States Department of Justice, and notification is required only of Respondents and not of any other party to the transaction. Respondents 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), Respondents shall not consummate the transaction until twenty (20) 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 the advanced written notification provisions of this Paragraph shall not apply to any 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.

- H. The purpose of the divestiture of the Plasma Donor Center Divestiture Assets and the related obligations imposed on the Respondents by this Order is:
1. to ensure the continued use of such assets for the purposes of the Business associated with each Plasma Donor Center Divestiture Facility;
 2. to create a viable and effective competitor that is independent of Respondents in the Business of each Plasma Donor Center Divestiture Facility; and
 3. to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint in a timely and sufficient manner.

III.

IT IS FURTHER ORDERED that:

- A. In connection with, or as a result of Respondent

1. The Monitor shall have the power and authority to monitor each 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 Monitor in a manner consistent with the purposes of the Order and in consultation with the Commission;
 2. The Monitor shall act in consultation with the Commission or its staff, and shall serve as an independent third party and not as an employee or agent of the Respondents or of the Commission; and
 3. The Monitor shall serve until Respondents complete each of the divestitures required by this Order and complete any transitional services required to be provided to an Acquirer under this Order or related Remedial Agreement(s), *provided, however*, that the Monitor's service shall not extend more than two (2) years after the Order Date *unless* the Commission decides to extend or modify this period as may be necessary or appropriate to accomplish the purposes of the Orders.
- E. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to each Respondent's personnel, books, documents, records kept in the ordinary course of business, facilities, and technical information, and such other relevant information as the Monitor may reasonably request, related to that Respondent's compliance with its obligations under the Orders, including, but not limited to, its obligations related to the relevant assets. Each Respondent 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 that Respondent's compliance with the Orders.
- F. The Monitor shall serve, without bond or other security, at the expense of Respondents, on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have authority to employ, at the expense of Respondents, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities.
- G. Respondents 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 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 Monitor.
- H. Respondents shall report to the Monitor in accordance with the requirements of this Order and as otherwise provided in any agreement approved by the Commission. The Monitor shall evaluate the reports submitted to the Monitor by a Respondent, and any reports submitted by the Acquirer with respect to the performance of a Respondent's obligations under the Order or the Remedial Agreement(s). Within thirty (30) days after

the date the Monitor receives these reports, the Monitor shall report in writing to the Commission concerning performance by a Respondent of its obligations under the Order.

- I. Respondents may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, that such agreement shall not restrict the Monitor from providing any information to the Commission.
- J. The Commission may, among other things, require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties.
- K. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor in the same manner as provided in this Paragraph.
- L. The Commission may on its own initiative, or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Order.
- M. The Monitor appointed pursuant to this Order may be the same Person appointed as a Divestiture Trustee pursuant to the relevant provisions of this Order.

V.

IT IS FURTHER ORDERED that:

- A. If the Respondents have not fully complied with the obligations to assign, grant, license, divest, transfer, deliver, 84 f(r) 84 t

- B. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The Divestiture

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 Respondents' absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture(s) 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 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 Respondents from among those approved by the Commission; *provided further, however*, that Respondents shall select such Person 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 Respondents, 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 Respondents, 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 Respondents, 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. Respondents 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 Monitor pursuant to the relevant provisions of this Order or the that Order to Maintain Asvestiture (nt)-2 (a)4 -n or autee 0 Tt(e)]TJ 31.88 0 Td (')Tj 0.001 Tc -0.00

9. Respondents 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*, that such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.
- E. The Commission may, among other things, require the Divestiture Trustee and each of the Divestiture Trustee'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 Divestiture Trustee's duties.
- F. 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.
- G. 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(s) required by this Order.

VI.

- B. Within five (5) days of each Closing Date, Respondents shall submit to Commission staff a letter certifying the date on which that particular divestiture occurred, including a paper original submitted to the Secretary of the Commission and electronic copies to the Secretary at ElectronicFilings@ftc.gov and to the Compliance Division at bccompliance@ftc.gov.
- C. Within thirty (30) days after the Order Date, and every thirty (30) days thereafter until

**NON-PUBLIC APPENDIX I
ACQUISITION AGREEMENT
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**NON-PUBLIC APPENDIX II.A
AGREEMENTS RELATED TO THE
PLASMA DONOR CENTER DIVESTITURE ASSETS
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