duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of Nestlé, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee divesting the Fort Dodge Plant.

8. Nestlé shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the 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 liabilities, claims, or expenses result from misfeasance, negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III.A. of this Order.

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

11. The trustee shall have no obligation or authority to operate or maintain the Fort Dodge Plant.

12. The trustee shall report in writing to Nestlé and to the Commission every sixty (60) days concerning the trustee's efforts to accomplish the divestiture.

IV

It Is Further Ordered that, within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until Nestlé has fully complied with the provisions of Paragraph II or III of this order, Nestlé shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, or has complied with those provisions. Nestlé shall include in its compliance reports, among other things that are required from time to time, a full description of all efforts being made to comply with Paragraphs II and III of the Order, including a description of all substantive contacts or negotiations for

the divestiture and the identities of all parties contacted. Nestlé also shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning the divestiture.

V

- It Is Further Ordered that, for a period of ten (10) years from the date this Order becomes final, Nestlé and Nestlé S.A. shall not, without the prior approval of the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:
- 1. acquire any stock, share capital, equity or other interest in any concern, corporate or non-corporate, engaged in manufacturing or producing canned cat food in the United States; or
- 2. acquire any assets which are located in the United States and which are used, or previously used (and still suitable for use) in the manufacture or production of canned cat food from any other manufacturer or producer of canned cat food in the United States.

Provided, however, that this Paragraph V. shall not apply to the acquisition of products or services in the ordinary course of business.

It is Further Ordered that, one year from the date this Order becomes final, annually for nine (9) years on the anniversary of the date this Order becomes final, and at other times as the Commission may require, Nestlé shall file with the Commission a verified written report setting forth in detail the manner and form in which it has complied and is complying with Paragraph V. this Order.

VII

It Is Further Ordered that, for the purpose of determining or securing compliance with this Order and subject to any legally recognized privilege or restriction, Nestlé and Nestlé S.A. shall permit any duly authorized representatives of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and designate for copying all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Nestlé relating to any matters contained in this Order; and

B. Upon five (5) days' notice to Nestlé or Nestlé S.A., and without restraint or interference from them, to interview their officers or employees, who may have counsel present, regarding such matters.

VIII

It Is Further Ordered that, Nestlé and Nestlé S.A. shall notify the Commission at least thirty (30) days prior to any proposed change in Nestlé or Nestlé S.A. such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of domestic subsidiaries or any other change that may affect compliance obligations arising out of this Order.

Appendix I—United States of America Before The Federal Trade Commission

In the matter of Nestle Food Company, a corporation, File No. 941–0124.

Asset Maintenance Agreement

This Asset Maintenance Agreement ("Agreement") is by and between Nestlé Food Company ("Nestlé"), a corporation organized, existing and doing business under and by virtue of the laws of the state of Delaware, with its principal executive offices located at 800 North Brand Boulevard, Glendale, California 91203, and the Federal Trade Commission ("Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. § 41, et seq. (collectively, the "Parties").

Premises

Whereas, on September 16, 1994, Nestlé entered into an Agreement to acquire certain assets (hereinafter "Acquisition") from Allen Products Company, Inc., d/b/a ALPO PetFoods and its subsidiaries ("Alpo"); and

Whereas, the Commission is now investigating the Acquisition to determine whether it would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the Agreement Containing Consent Order ("Consent Order"), the Commission must place it on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached preserving the Fort Dodge Plant, as defined in Paragraph I.F. of the Consent Order, and the Optional Assets, as defined in Paragraph I.H. of the Consent Order, during the period prior to the Commission's issuance of its Decision and Order (after the 60-day comment period), divestiture resulting from any proceeding challenging the legality of the Acquisition might not be