

accomplished in such a way as to satisfy plaintiffs, in their sole discretion, that the Relevant Wet Wipes Assets and Relevant Facial Tissue Assets can and will be used by the purchaser or purchasers as part of viable, ongoing businesses engaged in the selling of baby wipes and facial tissue at wholesale to retail stores. Each divestiture shall be made to a purchaser or purchasers for whom it is demonstrated to plaintiffs' satisfaction that (1) the purchase or purchases are for the purpose of competing effectively in making and selling branded baby wipes and/or facial tissue at wholesale to retail stores and other customers; and (2) the purchaser or purchasers have or soon will have the managerial, operational, and financial capability to compete effectively in making and selling branded baby wipes and/or facial tissue at wholesale to retail stores; and (3) none of the terms of any agreement between the purchaser or purchasers and defendants give defendants the ability artificially to raise the purchaser's or purchasers' costs, lower the purchaser's or purchasers' efficiency, or otherwise interfere in the ability of the purchaser or purchasers to compete effectively. Although Sections II(D)(2) and IV(A) require a sale of any two of four tissue mills, plaintiffs can, in their sole discretion, approve a divestiture involving a sale of less than two tissue mills listed in Section II(D), if convinced that such divestiture is sufficient to satisfy their competitive concerns.

E. Defendants shall exercise any residual right in any label licensed pursuant to this Final Judgment solely for the purpose of protecting their lawful intellectual property rights. Defendants shall not, in any circumstance, exercise any such right to impair or inhibit in any way a licensee's ability to compete, and they shall not exercise such right, directly or indirectly, to obtain competitively-sensitive information pertaining to any licensee.

#### V. Appointment of Trustee

A. If defendants have not accomplished any divestiture required by Section IV within the time specified therein, defendants shall notify plaintiffs of that fact in writing. Within ten (10) calendar days of their receipt of such written notice, plaintiffs shall provide defendants with written notice of the names and qualifications of not more than two (2) nominees for the position of trustee for the required divestiture. Defendants shall notify plaintiffs within five (5) calendar days thereafter whether either or both of such

nominees are acceptable. If either or both of such nominees are acceptable to defendants, plaintiffs shall notify the Court of the person upon whom the parties have agreed and the Court shall appoint that person as the trustee. If neither nominee is acceptable to defendants, they shall furnish to plaintiffs, within ten (10) calendar days after plaintiffs provide the names of their nominees, written notice of the names and qualifications of not more than two (2) nominees for the position of trustee for the required divestiture. If either or both of such nominees are acceptable to plaintiffs, plaintiffs shall notify the Court of the person upon whom the parties have agreed and the Court shall appoint that person as the trustee. If neither nominee is acceptable to plaintiffs, plaintiffs shall furnish the Court the names and qualifications of its and defendants' proposed nominees. The Court may hear the parties as to the nominees' qualifications and shall appoint one of the nominees as the trustee.

B. If defendants have not accomplished either of the divestitures required by Section IV of this Final Judgment at the expiration of the time period specified therein, subject to the selection process described in Section V(A), the appointment by the Court of the trustee shall become effective. The trustee shall then take steps to effect the divestiture(s) specified in Section IV(A).

C. After the trustee's appointment has become effective, only the trustee shall have the right to sell the Relevant Wet Wipes Assets or Relevant Facial Tissue Assets. The trustee shall have the power and authority to accomplish the divestiture(s) to a purchaser acceptable to plaintiffs at such price and on such terms as are then obtainable upon the best reasonable effort by the trustee, subject to the provisions of Section IV of this Final Judgment, and shall have such other powers as this Court shall deem appropriate. Defendants shall not object to the sale of the Relevant Wet Wipes Assets or Relevant Facial Tissue Assets by the trustee on any grounds other than the trustee's malfeasance. Any such objection by defendants must be conveyed in writing to plaintiffs and the trustee no later than fifteen (15) calendar days after the trustee has notified defendants of the proposed licensing and sale in accordance with Section VI of this Final Judgment.

D. The trustee shall serve at the cost and expense of defendants, shall receive compensation based on a fee arrangement which provides an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, and shall

serve on such other terms and conditions as the Court may prescribe; provided however, that the trustee shall receive no compensation, nor incur any costs or expenses (other than related to the selection process), prior to the effective date of his or her appointment. The trustee shall account for all monies derived. After approval by the Court of the trustee's accounting, including fees for its services, all remaining monies shall be paid to defendants and the trust shall then be terminated.

E. Defendants shall take no action to interfere with or impede the trustee's accomplishment of the divestiture of the Relevant Wet Wipes Assets or Relevant Facial Tissue Assets and shall use its best efforts to assist the trustee in accomplishing the required divestiture. Subject to a customary confidentiality agreement, the trustee shall have full and complete access to the personnel, books, records, and facilities related to the Relevant Wet Wipes Assets or the Relevant Facial Tissue Assets, and defendants shall develop such financial or other information necessary to the divestiture of the Relevant Wet Wipes Assets and Relevant Facial Tissue Assets.

F. After its appointment becomes effective, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish divestiture of the Relevant Wet Wipes Assets and Relevant Facial Tissue Assets as contemplated under this Final Judgment; provided however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Relevant Wet Wipes Assets and Relevant Facial Tissue Assets, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest these operations.

G. Within six (6) months after its appointment has become effective, if the trustee has not accomplished the divestiture required by Section IV of this Final Judgment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations; provided however,