

Complaint

IN THE MATTER OF

**MARS, INCORPORATED
AND
VCA INC.****CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT AND
SECTION 7 OF THE CLAYTON ACT***Docket No. C-4633; File No. 171 0057**Complaint, November 30, 2017– Decision, November 30, 2017*

This consent order addresses the \$9.1 billion acquisition by Mars, Incorporated of certain assets of VCA Inc. The complaint alleges that the acquisition, if consummated, would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act by lessening competition in the markets for certain specialty and emergency veterinary services in ten different localities in the United States. Under the order, Mars is required to divest twelve clinics.

Participants

For the *Commission*: Michael R. Barnett and David J. Gonen.

For the *Respondents*: Clifford H. Aronson and Michael J. Sheerin, Skadden, Arps, Slate, Meagher & Flom LLP; William Diaz, McDermott, Will & Emery; Paul B. Hewitt and Corey W. Roush, Akin Gump Strauss Hauer & Feld LLP.

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act, and its authority thereunder, the Federal Trade Commission (“Commission”), having reason to believe that Respondent Mars, Incorporated (“Mars”), a corporation subject to the jurisdiction of the Commission, has agreed to acquire Respondent VCA Inc. (“VCA”), a corporation subject to the jurisdiction of the Commission, in violation of Section 5 of the Federal Trade Commission Act (“FTC Act”), as amended, 15 U.S.C. § 45, that such acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding in respect thereof

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would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. RESPONDENTS

1. Respondent Mars is a private corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its headquarters at 6885 Elm St, McLean, VA 22101.

2. Respondent VCA is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its headquarters at 12401 West Olympic Blvd., Los Angeles, CA 90064.

3. Each Respondent is, and at all times relevant herein has been, engaged in commerce, as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a company whose business is in or affects commerce, as “commerce” is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. § 44.

II. THE PROPOSED ACQUISITION

4. Pursuant to an Agreement and Plan of Merger announced January 9, 2017, Mars proposes to acquire all of the assets of VCA in a transaction valued at approximately \$9.1 billion (the “Acquisition”). The Acquisition is subject to Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

III. THE RELEVANT MARKETS

5. The relevant lines of commerce in which to analyze the effects of the Acquisition are off-hours emergency and individual specialty veterinary services. Specialty veterinary services are required in cases that cannot be treated properly by a general practitioner veterinarian. General practitioner veterinarians commonly refer such cases to a specialist, typically a doctor of veterinary medicine board certified in the required specialty. Individual veterinary specialties include cardiology, critical care, internal medicine, neurology, oncology, ophthalmology, and surgery. Emergency veterinary services are used in acute

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situations in which a general practice veterinarian is not available or in some cases not properly trained or equipped to treat an animal's medical problem. Mars and VCA both provide specialty and off-hours emergency veterinary services in facilities operated across the United States.

6. For the purposes of this Complaint, the relevant areas in which to assess the competitive effects of the Acquisition are local, delineated by the distance and time that pet owners travel to receive treatment. The specific relevant service or services differ by local geographic area. The localities and relevant services at issue in each locality, are:

- a. Oncology in western suburbs of Chicago, IL;
- b. Emergency in Corpus Christi, TX;
- c. Critical Care, Emergency, Internal Medicine, and Surgery in Kansas City, MO;
- d. Critical Care and Emergency in Mesa, AZ;
- e. Critical Care and Oncology in northern New York City, NY and its northern suburbs;
- f. Critical Care, Internal Medicine, Neurology, Oncology, and Ophthalmology in Portland, OR;
- g. Emergency, Internal Medicine, and Oncology in Rockville, MD;
- h. Emergency in San Antonio, TX;
- i. Cardiology, Critical Care, Emergency, Internal Medicine, and Neurology in Seattle, WA; and
- j. Emergency, Internal Medicine, Oncology, and Ophthalmology in Vienna, VA.

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IV. THE STRUCTURE OF THE MARKETS

7. In each locality listed in Paragraph 6 above, the market for each relevant service indicated is highly concentrated. In a number of these markets, the combined firm would be the only provider following the transaction. In other markets, a limited number of alternatives to the combined firm would remain following the transaction. Thus, the Acquisition would substantially increase concentration within the described localities.

V. ENTRY CONDITIONS

8. Entry into the relevant markets described in Paragraphs 5 and 6 would not be timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the Acquisition. For de novo entrants, obtaining financing to build a new specialty or emergency veterinary facility and acquiring or leasing necessary equipment can be expensive and time consuming. The investment is risky for specialists that do not have established practices and bases of referrals in the area. Further, extensive education and training, beyond that required to become a general practitioner veterinarian, is required to become a licensed veterinary specialist. Consequently, specialists are in short supply, and recruiting them to move to a new area often takes more than two years, making timely expansion by existing specialty clinics difficult.

VI. EFFECTS OF THE ACQUISITION

9. The effects of the Acquisition, if consummated, may be to substantially lessen competition and to tend to create a monopoly in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, by, among other things:

- a. eliminating head-to-head competition between Mars and VCA in the provision of specialty and emergency veterinary services;
- b. increasing the likelihood that Mars would unilaterally exercise market power; and

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- c. increasing the likelihood that customers would be forced to pay higher prices or experience a degradation in quality for the relevant services.

VII. VIOLATIONS CHARGED

10. The Acquisition described in Paragraph 4 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

11. The Acquisition described in Paragraph 4, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this thirtieth day of November, 2017 issues its Complaint against said Respondents.

By the Commission.

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[Public Record Version]

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition of Respondent VCA Inc. (“VCA”), by Respondent Mars, Incorporated (“Mars”), and Respondents having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents 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

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent

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Orders (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents 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 waivers 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 Respondents have violated the said Acts and that a Complaint should issue stating its charges in that respect, 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, and having duly considered the comments received from interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34, and having revised the Decision and Order in certain respects, now in further conformity with Commission Rule 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent Mars is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at 6885 Elm Street, McLean, Virginia, 22101.
2. Respondent VCA is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at 12401 West Olympic Boulevard, Los Angeles, California, 90064.
3. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and of Respondents, and this proceeding is in the public interest.

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ORDER**I.**

IT IS ORDERED that, as used in this Order, the following definitions shall apply and all other definitions used in the Hold Separate Order, shall apply:

- A. “Mars” means Mars Incorporated, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Mars, including Banfield Pet Hospital, BluePearl and Pet Partners, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. After the date the Acquisition is completed, “Mars” includes VCA.
- B. “VCA” means VCA Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by VCA, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Acquirer” means each Person approved by the Commission to acquire the Divestiture Assets pursuant to this Order.
- D. “Acquisition” means the acquisition by Mars of VCA, as described in, and contemplated by, the Agreement and Plan of Merger dated January 7, 2017.
- E. “Acquisition Date” means the date on which the Acquisition is consummated.
- F. “Business Records” means all information, books and records, documents, files, correspondence, manuals, computer printouts, databases, and other documents, including all hard copies and electronic records wherever stored, including without limitation, client and customer lists, patient and payor information,

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referral sources, research and development reports, production reports, service and warranty records, maintenance logs, equipment logs, operating guides and manuals, documents relating to policies and procedures, financial and accounting records and documents, creative materials, advertising materials, promotional materials, studies, reports, correspondence, financial statements, financial plans and forecasts, operating plans, price lists, cost information, supplier and vendor contracts, marketing analyses, customer lists, customer contracts, employee lists and contracts, salaries and benefits information, physician lists and contracts, supplier lists and contracts, and, subject to legal requirements, copies of all personnel files.

- G. “Clinic Assets” means all of Respondents’ rights, title, and interest in all property and assets, tangible or intangible, of whatever nature and wherever located, relating to or used in connection with the Emergency Veterinary Clinic or Specialty Veterinary Clinic of the Divestiture Clinics, including, without limitation, all:
1. Real property interests (including fee simple interests and real property leasehold interests, whether as lessor or lessee), wherever located, including all easements, appurtenances, licenses, and permits, together with all buildings and other structures, facilities, and improvements located thereon, owned, leased, or otherwise held;
 2. Tangible Personal Property, including, without limitation, any Tangible Personal Property removed from and not replaced at the Divestiture Clinics, if such property was used by or in connection with the provision of Specialty Veterinarian services at the Divestiture Clinics on or after June 1, 2017;
 3. Rights under any and all contracts and agreements (e.g., leases, service agreements such as supply agreements, procurement contracts), including, but

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not limited to, contracts and agreements with physicians and other veterinary health care providers and support staff, suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consigners, and consignees;

4. Rights and title in and to use the name or part of the name of the Divestiture Clinic on a permanent and exclusive basis (even as to Respondents); *provided, however*, that Acquirer shall not have the right to use Mars and VCA trademarks, trade names, or logos; *provided further, however*, that the Acquirer of the BluePearl Hope Advanced Veterinary Center, located at 140 Park Street, SE, Vienna, VA 22180, shall have the exclusive right as to the Respondents to use, after a transition period, “Hope” in any veterinary clinic name – specialty or otherwise – in the Relevant Notice Area that includes the BluePearl Hope Advanced Veterinary Center in Vienna, VA.
5. Intellectual Property;
6. Intangible rights and property other than Intellectual Property, including, going concern value, goodwill, internet, telecopy and telephone numbers, domain names, listings, and web sites, *provided, however*, intangible rights do not include domain names, and web sites;
7. Approvals, consents, licenses, certificates, registrations, permits, waivers, or other authorizations issued, granted, given, or otherwise made available by or under the authority of any governmental body or pursuant to any legal requirement, and all pending applications therefore or renewals thereof, to the extent assignable;
8. All consumable or disposable inventory kept in the normal course of business, including, but not

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limited to, janitorial, office, and medical supplies, and pharmaceuticals;

9. Accounts receivable;

10. Rights under warranties and guarantees, express or implied; and

11. Business Records.

Provided, however, that Respondents may retain a copy of Business Records to the extent necessary to comply with applicable law, regulations, and other legal requirements.

H. “Closing Date” means the date on which each divestiture required by this Order is completed.

I. “Commission” means the Federal Trade Commission.

J. “Confidential Business Information” means information not in the public domain that is related to or used in connection with the Divestiture Clinics, except for any information that was or becomes generally available to the public other than as a result of disclosure by Respondents, and includes, but is not limited to, pricing information, marketing methods, market intelligence, competitor information, commercial information, management system information, business processes and practices, bidding practices and information, procurement practices and information, supplier qualification and approval practices and information, and training practices.

K. “Direct Cost” means cost not to exceed the cost of labor, material, travel, and other expenditures to the extent the costs are directly incurred to provide Transitional Services. “Direct Cost” to an Acquirer for its use of any of Respondents’ employees’ labor shall not exceed the then-current average wage rate for such employee, including benefits.

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- L. “Divestiture Clinics” means the following Emergency Veterinary Clinics or Specialty Veterinary Clinics owned and operated by Respondents:
1. VCA Mission Animal Referral and Emergency Center, located at 5914 Johnson Drive, Mission, KS 66202;
 2. BluePearl Emergency Animal Clinic, located at 86 West Juniper Avenue, Gilbert, AZ 85233;
 3. VCA Animal Specialty Center, located at 9 Odell Plaza, Yonkers, NY 10101;
 4. VCA Veterinary Referral Associates, located at 500 Perry Parkway, Gaithersburg, MD 20877;
 5. BluePearl Hope Advanced Veterinary Center, located at 140 Park Street, SE, Vienna, VA 22180;
 6. BluePearl Columbia River Veterinary Specialist, located at 6607 NE 84th Street, Suite 109, Vancouver, WA 98665;
 7. BluePearl Cascade Veterinary Referral Center, located at 11140 SW 68th Parkway, Tigard, OR 97223;
 8. BluePearl Emergency Pet Clinic, located at 1502 Airline Road, #220, Corpus Christi, TX 78412;
 9. Blue-Pearl Emergency Pet Center, located at 8503 Broadway Street, #105, San Antonio, TX 78217;
 10. BluePearl Emergency Pet Hospital, located at 1050 Bonaventura Drive, Elk Grove Village, IL 60007;
 11. VCA Veterinary Specialty Center of Seattle, located at 20115 44th Avenue W, Lynwood, WA 98036; and

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12. VCA Alpine Animal Hospital, located at 888 NW Sammamish Road, Issaquah, WA 98027.

M. “Divestiture Package A” means the following Divestiture Clinics owned and operated by Respondents:

1. VCA Mission Animal Referral and Emergency Center, located at 5914 Johnson Drive, Mission, KS 66202;
2. BluePearl Emergency Animal Clinic, located at 86 West Juniper Avenue, Gilbert, AZ 85233; and
3. VCA Animal Specialty Center, New York, located at 9 Odell Plaza, Yonkers, NY 10101.

N. “Divestiture Package B” means the following Divestiture Clinics owned and operated by Respondents:

1. VCA Veterinary Referral Associates, located at 500 Perry Parkway, Gaithersburg, MD 20877;
2. BluePearl Hope Advanced Veterinary Center, located at 140 Park Street, SE, Vienna, VA 22180;
3. BluePearl Columbia River Veterinary Specialist, located at 6607 NE 84th Street, Suite 109, Vancouver, WA 98665; and
4. BluePearl Cascade Veterinary Referral Center, located at 11140 SW 68th Parkway, Tigard, OR 97223.

O. “Divestiture Package C” means the following Divestiture Clinics owned and operated by Respondents:

1. BluePearl Emergency Pet Clinic, located at 1502 Airline Road, #220, Corpus Christi, TX 78412;

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2. Blue-Pearl Emergency Pet Center, located at 8503 Broadway Street, #105, San Antonio, TX 78217;
 3. BluePearl Emergency Pet Hospital, located at 1050 Bonaventura Drive, Elk Grove Village, IL 60007;
 4. VCA Veterinary Specialty Center of Seattle, located at 20115 44th Avenue W, Lynwood, WA 98036; and
 5. VCA Alpine Animal Hospital, located at 888 NW Sammamish Road, Issaquah, WA 98027.
- P. “Divestiture Trustee” means the person appointed pursuant to Paragraph VI of this Order.
- Q. “Emergency Veterinary Clinic” means a veterinary clinic that offers 24-hour or overnight service with the primary function of receiving, treating, and monitoring of emergency patients during its specified hours of operation. A veterinarian is in attendance at all hours of operation and sufficient staff is available to provide timely and appropriate care. Veterinarians, support staff, instrumentation, medications, and supplies must be sufficient to provide an appropriate level of emergency care.
- R. “Government Approvals” means any permissions or sanctions issued by any government or governmental organization, including, but not limited to, licenses, permits, accreditations, authorizations, registrations, certifications, certificates of occupancy, and certificates of need.
- S. “Intellectual Property” means, without limitation, all:
1. Patents, patent applications, and inventions and discoveries that may be patentable;
 2. Know-how, trade secrets, software, technical information, data, registrations, applications for Governmental Approvals, inventions, processes,

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best practices (including clinical pathways), formulae, protocols, standards, methods, techniques, designs, quality control practices and information, research and test procedures and information, and safety, environmental and health practices and information;

3. Confidential or proprietary information, commercial information, management systems, business processes and practices, customer lists, customer information, customer records and files, customer communications, procurement practices and information, supplier qualification and approval practices and information, training materials, sales and marketing materials, customer support materials, advertising and promotional materials; and
4. Rights in any jurisdiction to limit the use or disclosure of any of the foregoing, and rights to sue and recover damages or obtain injunctive relief for infringement, dilution, misappropriation, violation, or breach of any of the foregoing.

Provided, however, that Intellectual Property shall not include Mars and VCA trademarks, trade names, or logos.

- T. “Monitor” means the person appointed as Monitor in this Order.
- U. “NVA” means National Veterinary Associates, Inc., a Delaware corporation, with its office and principal place of business located at 29229 Canwood Street #100, Agoura Hills, CA 91301.
- V. “NVA Divestiture Agreements” means the Divestiture Agreements by and among VCA, BluePearl, Animal Care Specialists, and NVA, dated July 21, 2017, and July 24, 2017, and all attachments and exhibits, thereto, attached as Non-Public Appendix D to this Order.

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- W. “Pathway” means Pathway Partners Vet Management Company, LLC, a Delaware limited liability company, with its office and principal place of business located at 4225 Guadalupe St, Austin, TX 78751.
- X. “Pathway Divestiture Agreement” means the Divestiture Agreement by and among VCA, BluePearl, and Pathway, dated July 24, 2017, and all attachments and exhibits, thereto, attached as Non-Public Appendix E to this Order.
- Y. “Person” means any individual, partnership, firm, corporation, association, trust, unincorporated organization, or other entity or governmental body.
- Z. “PetVet” means PetVet Care Centers, a Delaware limited liability company, with its main office and principal place of business located at One Gorham Island, Westport, CT, 06880.
- AA. “PetVet Divestiture Agreement” means the Divestiture Agreement by and among VCA, BluePearl, and PetVet, dated July 22, 2017, and all attachments and exhibits, thereto, attached as Non-Public Appendix F to this Order.
- BB. “Relevant Notice Area” means the areas identified in Non-Public Appendix A to this Order.
- CC. “Relevant Employees” means any and all full-time employees, part-time employees, or contract employees, who work or worked at the Divestiture Clinics at any time during the ninety (90) days preceding the date the Acquisition is completed or at any time after the date the Acquisition is completed, and whose duties relate or related to the Divestiture Clinic.
- DD. “Remedial Agreement” means the following:
1. The NVA Divestiture Agreements;

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2. The PetVet Divestiture Agreement;
 3. The Pathway Divestiture Agreement; and
 4. Any agreement between a Respondent and an Acquirer, including all amendments, exhibits, attachments, and schedules thereto, relating to a Divestiture Clinic or Clinic Assets, that has been approved by the Commission to accomplish the requirements of this Order.
- EE. “Respondents” means Mars and VCA, collectively or individually.
- FF. “Specialty Veterinarian” means a veterinarian who (i) legally holds himself or herself out as a specialist in veterinary medicine, and (ii) has board certification, in one, or more, of the following specialties: cardiology, emergency and critical care, internal medicine, neurology, oncology, ophthalmology, or surgery.
- GG. “Specialty Veterinary Clinic” means a clinic where Specialty Veterinarians practice, including the Clinic Assets.
- HH. “Tangible Personal Property” means all machinery, equipment, spare parts, tools and tooling, fixtures, vehicles, furniture, inventories, office equipment, computer hardware, supplies and materials, and all other items of tangible personal property of every kind owned or leased by Respondents, wherever located, together with any express or implied warranty by the manufacturers, sellers, or lessors of any item or component part thereof and all maintenance records and other documents relating thereto.
- II. “Third Parties” means Persons other than Respondents or the Acquirer(s).
- JJ. “Transitional Administrative Services” means administrative assistance with respect to the Divestiture Clinics, including, but not limited to,

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assistance relating to billing, accounting, governmental regulation, human resources management, information systems, and purchasing, as well as providing assistance in acquiring and obtaining access to all software used in the provision of such services.

KK. “Transitional Clinical Services” means clinical assistance and support services with respect to the Divestiture Clinics.

LL. “Transitional Services” means Transitional Administrative Services and Transitional Clinical Services.

II.**IT IS FURTHER ORDERED** that:

A. Respondents shall, within ten (10) business days after the Acquisition Date, absolutely, and in good faith, divest (i) Divestiture Package A to NVA, including all Clinic Assets related to those clinics pursuant to and in accordance with the NVA Divestiture Agreements; (ii) Divestiture Package B to PetVet, including all Clinic Assets related to those clinics pursuant to and in accordance with the PetVet Divestiture Agreement; and (iii) Divestiture Package C to Pathway, including all Clinic Assets related to those clinics pursuant to and in accordance with the Pathway Divestiture Agreement, absolutely, and in good faith, as on-going businesses. Any failure by Respondents to comply with a Remedial Agreement shall constitute a failure to comply with this Order. The Remedial Agreements shall not vary or contradict, or be construed to vary or contradict, the terms of this Order. Nothing in this Order shall reduce, or be construed to reduce, any rights or benefits of an Acquirer, or any obligations of Respondents, under the Remedial Agreements.

Provided, however, if, at the time the Commission determines to make this Order final, the Commission notifies Respondents that NVA, PetVet, or Pathway is

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not an acceptable Acquirer then, after receipt of such written notification: (1) Respondents shall immediately notify the unacceptable Acquirer of the notice received from the Commission and shall as soon as practicable, but no later than within five (5) business days, effect the rescission of the relevant Divestiture Agreement; and (2) Respondents shall, within six (6) months of the date Respondents receive notice of such determination from the Commission, divest the unacceptable Divestiture Clinics and Clinic Assets, as applicable, absolutely and in good faith, at no minimum price, as on-going businesses to an Acquirer or Acquirers that receive the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

Provided further, however, that if, at the time the Commission determines to make this Order final, the Commission notifies Respondents that the manner in which any of the divestitures accomplished is not acceptable, the Commission may direct Respondents, or appoint a Divestiture Trustee, to effect such modifications to the manner of divestiture 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. Respondent Mars shall not acquire Respondent VCA until it has obtained for all the Divestiture Clinics:
1. All approvals for the assignment to each Acquirer of the rights, title, and interest to each lease for real property of each Divestiture Clinic; and
 2. Any and all Governmental Approvals necessary for each Acquirer to operate each Divestiture Clinic as of the Closing Date of such Divestiture Clinic in substantially the same manner as the applicable Respondent operated such Divestiture Clinic immediately prior to such closing.

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C. Respondents:

1. Shall not disclose Confidential Business Information relating exclusively to any of the Divestiture Clinics to any Person other than the Acquirer of such Divestiture Clinic; and
2. After the Closing Date of such Divestiture Clinic:
 - a. Shall not use Confidential Business Information relating exclusively to any of the Divestiture Clinics for any purpose other than for complying with the terms of this Order, for complying with any law, or for the purposes of billing and collections, quality incentive program performance management, patient outcomes, peer review and physician credentialing activities, or responding to any inquiry or action from a third party required by law; and
 - b. Shall destroy all records of Confidential Business Information relating exclusively to any of the Divestiture Clinics, except to the extent that: (i) Respondents are required by law to retain such information, and (ii) Respondents' inside or outside attorneys may keep one copy solely for archival purposes, but may not disclose such copy to the rest of Mars or VCA, respectively.

D. From the date Respondents sign the Consent Agreement until the Closing Date, Respondents shall:

1. Maintain each of the Divestiture Clinics and all Clinic Assets in substantially the same condition (except for normal wear and tear) as they existed at the time Respondents sign the Consent Agreement;
2. Take such actions that are consistent with the past practices of Respondents in connection with each Divestiture Clinic and all the Clinic Assets, and

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that are taken in the ordinary course of business and in the normal day-to-day operations of the Divestiture Clinics;

3. Keep available the services of the current officers, employees, and agents of Respondents; and maintain the relations and goodwill with suppliers, veterinarians, landlords, patients, employees, agents, and others having business relations with the Divestiture Clinics and the Clinic Assets; and
 4. Preserve the Divestiture Clinics and Clinic Assets as ongoing businesses and not take any affirmative action, or fail to take any action within Respondents' control, as a result of which the viability, competitiveness, and marketability of the Divestiture Clinics and Clinic Assets would be diminished.
 5. The purposes of this Paragraph II.D. are to: (1) preserve the Divestiture Clinics as viable, competitive, and ongoing businesses until the Closing Date, (2) prevent interim harm to competition pending the relevant divestitures and other relief, and (3) help remedy any anticompetitive effects of the Acquisition as alleged in the Commission's Complaint.
- E. The purpose of the divestiture is to ensure the continuation of the Divestiture Clinics as ongoing viable businesses engaged in the same business in which the assets were engaged at the time of the announcement of the Acquisition, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint in this matter.

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III.

IT IS FURTHER ORDERED that Respondents:

- A. Shall, no later than ten (10) days after a request from an Acquirer, provide the Acquirer with the following information for each Relevant Employee, and, to the extent known and applicable, each independent contractor who has worked at a Divestiture Clinic since January 1, 2017, as and to the extent permitted by law (unless such information has already been provided):
1. Name, job title or position, date of hire, and effective service date;
 2. Specific description of the employee's responsibilities;
 3. The base salary or current wages;
 4. Most recent bonus paid, aggregate annual compensation for Respondents' last fiscal year, and current target or guaranteed bonus, if any;
 5. Employment status (*i.e.*, active or on leave or disability; full-time or part-time);
 6. Any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly situated employees; and
 7. At the Acquirer's option, copies of all employee benefit plans and summary plan descriptions (if any) applicable to the Relevant Employee.
- B. Shall, within a reasonable time after a request from an Acquirer, provide to the Acquirer an opportunity to meet personally and outside the presence or hearing of any employee or agent of any Respondent, with any one or more of the Relevant Employees, and to make

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offers of employment to any one or more of the Relevant Employees.

- C. Shall not interfere, directly or indirectly, with the hiring or employing by the Acquirer of any Relevant Employees, not offer any incentive to such employees to decline employment with the Acquirer, and not otherwise interfere with the recruitment of any Relevant Employee by the Acquirer; *provided, however*, that Respondents may:
1. Advertise for employees in newspapers, trade publications, or other media, or engage recruiters to conduct general employee search activities, in either case not targeted specifically at Relevant Employees; or
 2. Hire Relevant Employees who apply for employment with Respondents, as long as such employees were not solicited by Respondents in violation of this Paragraph; *provided further, however*, that this Paragraph shall not prohibit Respondents from making offers of employment to or employing any Relevant Employee if the Acquirer has notified Respondents in writing that the Acquirer does not intend to make an offer of employment to that employee, or where such an offer has been made and the employee has declined the offer, or where the employee's employment has been terminated by the Acquirer.
- D. Shall remove any impediments within the control of Respondents that may deter Relevant Employees from accepting employment with an Acquirer, including, but not limited to, removal of any non-compete or confidentiality provisions of employment or other contracts with Respondents that may affect the ability or incentive of those individuals to be employed by an Acquirer, and shall not make any counteroffer to a Relevant Employee who receives a written offer of employment from an Acquirer; *provided, however*, that nothing in this Order shall be construed to require

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Respondents to terminate the employment of any employee or prevent Respondents from continuing the employment of any employee.

- E. Shall provide reasonable financial incentives for Relevant Employees, as identified by Respondents and any Acquirer, to continue in their positions. Such incentives may include, but are not limited to, guaranteeing a retention bonus for the Specialty Veterinarians at the Divestiture Clinics to assure their continued employment at such clinic, a continuation of all employee benefits, including the funding of regularly scheduled raises and bonuses, and the vesting of pension benefits (as permitted by law and for those Relevant Employees covered by a pension plan), offered by Respondents.
- F. Shall not, for a period of one (1) year following the Closing Date of the particular Divestiture Clinic, hire a Specialty Veterinarian to work at any of Respondent Mars' veterinary clinics in the Relevant Notice Areas of that Divestiture Clinic. This paragraph applies to any Specialty Veterinarian who was, has been, or is working at the particular Divestiture Clinic since the date the Order was issued.

Provided, however, Respondent Mars may offer part-time contract hours to a Specialty Veterinarian at a Divestiture Clinic who has been working as a part-time contract Specialty Veterinarian for Respondent Mars or VCA in the Relevant Notice Areas of that Divestiture Clinic, if the part-time contract hours offered by Respondent Mars would not, in any way, interfere with the Specialty Veterinarian's ability to fulfill his or her employment responsibilities to the Acquirer.

- G. Shall not, for a period of two (2) years following the Closing Date of any Divestiture Clinic, directly or indirectly, solicit or otherwise attempt to induce any of the Relevant Employees who have accepted offers of employment with an Acquirer to terminate his or her

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employment with the Acquirer; *provided, however*, that Respondents may:

1. Advertise for employees in newspapers, trade publications, or other media, or engage recruiters to conduct general employee search activities, in either case not targeted specifically at Relevant Employees; or
2. Hire Relevant Employees who apply for employment with Respondents, as long as such employees were not solicited by Respondents in violation of this Paragraph; *provided further, however*, that this Paragraph shall not prohibit Respondents from making offers of employment to or employing any Relevant Employee if an Acquirer has notified Respondents in writing that the Acquirer does not intend to make an offer of employment to that employee, or where such an offer has been made and the employee has declined the offer, or where the employee's employment has been terminated by the Acquirer.

IV.

IT IS FURTHER ORDERED that, at the request of an Acquirer, for a period not to exceed twelve (12) months, or as otherwise approved by the Commission, and in a manner (including pursuant to an agreement) that receives the prior approval of the Commission:

- A. Respondents shall provide Transitional Services to the Acquirer or Acquirers sufficient to enable the Acquirer or Acquirers to operate the Divestiture Clinics, and to provide Specialty Veterinary services at the Divestiture Clinic in substantially the same manner that Respondents have operated such facility and provided such services at such Clinic; and
- B. Respondents shall provide the Transitional Services required by this Paragraph at substantially the same

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level and quality as such services are provided by Respondents at the Divestiture Clinics.

Provided, however, that Respondents shall not (i) require any Acquirer to pay compensation for Transitional Services that exceeds the Direct Cost of providing such goods and services, or (ii) terminate its obligation to provide Transitional Services because of a material breach by the Acquirer of any agreement to provide such assistance unless Respondents are unable to provide such services due to such material breach.

V.**IT IS FURTHER ORDERED** that:

- A. Thomas Carpenter shall be appointed Monitor to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by the Order.
- B. No later than one (1) day after the Acquisition Date, Respondents shall, pursuant to the Monitor Agreement, attached as Appendix B and Non-Public Appendix C (Compensation) to this Order, transfer to the Monitor all the rights, powers, and authorities necessary to permit the Monitor to perform his duties and responsibilities in a manner consistent with the purposes of this Order.
- C. In the event a substitute Monitor is required, the Commission shall select the Monitor, subject to the consent of Mars, which consent shall not be unreasonably withheld. If Mars has not opposed, in writing, including the reasons for opposing, the selection of a proposed Monitor within ten (10) days after notice by the staff of the Commission to Mars of the identity of any proposed Monitor, Mars shall be deemed to have consented to the selection of the proposed Monitor. Not later than ten (10) days after appointment of a substitute Monitor, Mars shall execute an agreement that, subject to the prior approval of the Commission, confers on the Monitor

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all the rights and powers necessary to permit the Monitor to monitor Respondent's compliance with the terms of this Order and the Remedial Agreements in a manner consistent with the purposes of this Order.

- D. Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:
1. The Monitor shall have the power and authority to monitor Respondents' compliance with the terms of this Order and the Remedial Agreements, 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 this Order and in consultation with the Commission, including, but not limited to:
 - a. Assuring that Respondents expeditiously comply with all obligations and perform all responsibilities as required by this Order, and the Remedial Agreements;
 - b. Monitoring any transition services agreements; and
 - c. Assuring that Confidential Business Information is not received or used by Respondents or the Acquirers, except as allowed in this Order.
 2. The Monitor shall act in a fiduciary capacity for the benefit of the Commission.
 3. The Monitor shall serve for such time as is necessary to monitor Respondents' compliance with the provisions of this Order and the Remedial Agreements.
 4. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to Respondents' personnel, books,

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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 Respondents' compliance with their obligations under this Order and the Remedial Agreements. Respondents 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 Respondents' compliance with this Order and the Remedial Agreements.

5. The Monitor shall serve, without bond or other security, at the expense of Mars on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have authority to employ, at the expense of Mars, 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.
6. Mars 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 malfeasance, gross negligence, willful or wanton acts, or bad faith by the Monitor.
7. Mars shall report to the Monitor in accordance with the requirements of this Order and/or as otherwise provided in any agreement approved by the Commission. The Monitor shall evaluate the

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reports submitted to the Monitor by Mars, and any reports submitted by the Acquirer with respect to the performance of Respondent's obligations under this Order and the Remedial Agreements.

8. Within one (1) month from the date the Monitor is appointed pursuant to this paragraph, every sixty (60) days thereafter, and otherwise as requested by the Commission, the Monitor shall report in writing to the Commission concerning performance by Respondents of their obligations under this Order, and the Remedial Agreements.
 9. 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*, 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 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.
- 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 this Order and the Remedial Agreements.

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- H. A Monitor appointed pursuant to this Order may be the same Person appointed as a Divestiture Trustee pursuant to this Order.

VI.**IT IS FURTHER ORDERED** that:

- A. If Respondents have not fully complied with the obligations imposed by Paragraphs II of this Order, the Commission may appoint a Divestiture Trustee to divest any remaining Divestiture Clinics, and perform Respondents' other obligations in a manner that satisfies the requirements of this Order. In the event that the Commission or the Attorney General brings an action pursuant to Section 5(*I*) of the Federal Trade Commission Act, 15 U.S.C. § 45(*I*), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a Divestiture Trustee in such action to divest the required assets. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to Section 5(*I*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondents to comply with this Order.
- B. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, and stated in writing their reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.

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- C. Not later than ten (10) days after the appointment of a Divestiture Trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effectuate the divestitures required by, and satisfy the additional obligations imposed by, this Order.
- D. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to effectuate the divestitures required by, and satisfy the additional obligations imposed by, this Order.
 2. The Divestiture Trustee shall have one (1) year after the date the Commission approves the trust agreement described herein to effectuate the required divestitures, which shall be subject to the prior approval of the Commission. If, however, at the end of the one (1) year period, the Divestiture Trustee has submitted a plan to divest, or believes the divestitures can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed Divestiture Trustee, by the court; *provided, however*, the Commission may extend the divestiture period only two (2) times.
 3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets that are required to be divested by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop

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such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays caused by Respondents shall extend the time for divestiture under this Paragraph for a time period equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.

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. Each divestiture 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

Decision and Order

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, malfeasance, 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.
8. The Divestiture Trustee shall report in writing to Respondents and to the Commission every thirty (30) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.
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

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agreement; *provided, however*, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.

10. The Commission may, among other things, require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, representatives, and assistants to sign an appropriate confidentiality agreement relating to Commission materials and information received in connection with the performance of the Divestiture Trustee's duties and responsibilities.
- E. If the Commission determines that the 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.
- F. 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 divestitures required by this Order.

VII.**IT IS FURTHER ORDERED** that:

- A. No Remedial Agreement shall limit or contradict, or be construed to limit 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 any Acquirer or to reduce any obligations of Respondents under such agreements.
- B. Each Remedial Agreement shall be incorporated by reference into this Order and made a part hereof.
- C. Respondents shall comply with all terms of each Remedial Agreement, and any breach by Respondents

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of any term of any Remedial Agreement shall constitute a failure to comply with this Order. If any term of any Remedial Agreement varies from the terms of this Order (“Order Term”), then to the extent that Respondents cannot fully comply with both terms, the Order Term shall determine Respondents’ obligations under this Order.

VIII.**IT IS FURTHER ORDERED** that:

- A. For a period of ten (10) years from the date this Order is issued, Respondent Mars shall not, without providing advance written notification to the Commission in the manner described in this Paragraph:
 - 1. Acquire any assets of, or financial interest in, any of the particular Specialty Veterinary Clinics, any of the particular Emergency Veterinary Clinics, or other clinics identified in the Relevant Notice Areas; or
 - 2. Enter into any contract to participate in the management, operation, or control of any of the particular Specialty Veterinary Clinics, any of the particular Emergency Veterinary Clinics, or other clinics identified in the Relevant Notice Areas.
- B. 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”), 16 C.F.R. § 803 App., 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

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provide the Notification to the Commission at least thirty (30) 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 documentary material (within the meaning of 16 C.F.R. § 803.20), Respondents 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 appropriate, granted by letter from the Bureau of Competition. *Provided, however,* that prior notification shall not be required by this Paragraph for a 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.

IX.**IT IS FURTHER ORDERED** that:

- A. Within thirty (30) days after this Order is issued, and every thirty (30) days thereafter until Respondents have complied with their obligations in Paragraph II of this Order (or Paragraph VI of this Order, if applicable), Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with Paragraph II of this Order (or Paragraph VI of this Order, if applicable). Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraph II of this Order (or Paragraph VI of this Order, if applicable), including a description of all substantive contacts or negotiations for the divestitures and the identity of all parties contacted. Respondents shall include in their compliance reports copies of all written communication to and from such parties, all internal

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memoranda, and all reports and recommendations concerning the divestiture.

- B. One (1) year after this Order is issued, annually for the next nine (9) years on the anniversary of that date, and at other times as the Commission may require, Respondent Mars shall file verified written reports with the Commission setting forth in detail the manner and form in which they have complied and are complying with this Order.

X.

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

- A. Any proposed dissolution of Respondent Mars;
- B. Any proposed acquisition, merger, or consolidation of Respondent Mars; and
- C. Any other change in Respondent Mars including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change may affect compliance obligations arising out of this Order.

XI.

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 the applicable Respondent made to its principal United States offices, registered office of their United States subsidiaries, or headquarters addresses, such Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of such Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession or

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under the control of such Respondent related to compliance with this Order, which copying services shall be provided by such Respondent at the request of the authorized representative(s) of the Commission and at the expense of such Respondent; and

- B. The opportunity to interview officers, directors, or employees of such Respondent, who may have counsel present, related to compliance with this Order.

XII.

IT IS FURTHER ORDERED that this Order shall terminate on November 30, 2027.

By the Commission.

NON-PUBLIC APPENDIX A
Relevant Notice Areas

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

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APPENDIX B**MONITOR AGREEMENT**

This Monitor Agreement ("Agreement") entered into this 15th day of August, 2017, by and between Dr. Thomas Carpenter ("Monitor") and Mars, Incorporated ("Mars") (collectively, the "Parties"), provides as follows:

WHEREAS the Federal Trade Commission (the "Commission") is considering for public comment an Agreement Containing Consent Order with Respondent which provides, among other things, that Respondent divest certain specialty or emergency veterinary clinics and assets associated with those clinics, enter into agreements — if necessary — providing the acquirers of the veterinary clinics with transition services, and engage a monitor to monitor Respondent's compliance with its obligations under the Decision and Order (the Order);

WHEREAS, the Commission is expected to issue the Agreement Containing Consent Order and appoint the Monitor pursuant to the Order to monitor Respondent's compliance with the terms of the Order, and the Monitor has consented to such appointment;

WHEREAS, the Order further provides that Respondent shall execute an agreement, subject to prior approval of the Commission, conferring all the rights and powers necessary to permit Monitor to carry out his duties and responsibilities pursuant to the Order;

WHEREAS, this Agreement, although executed by Monitor and Respondent, is not effective for any purpose, including but not limited to imposing rights and responsibilities on Respondent or Monitor under the Order, until this Agreement has been approved by the Commission and the Order has been accepted by the Commission for public comment; and

WHEREAS, the parties to this Agreement intend to be legally bound, subject only to the Commission's approval of this Agreement.

All capitalized terms used in this Agreement and not specifically defined herein shall have the respective definitions given to them in the Order.

ARTICLE I

1.1 Powers of the Monitor. Monitor shall have the rights, duties, powers and authority conferred upon Monitor by the Order that are necessary for Monitor to monitor Respondent's compliance with the Order. No later than one (1) day after the Acquisition Date, Respondent hereby transfers to Monitor all rights, powers, and authorities necessary to permit Monitor to perform his duties and responsibilities pursuant to the Order. Any descriptions thereof contained in this Agreement in no way modify Monitor's powers and authority or Respondent's obligations under the Order.

1.2 Monitor's Duties. Monitor shall monitor Respondent's compliance with the Order, including, but not limited to:

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ARTICLE II

2.1 Retention and Payment of Counsel, Consultants, and other Assistants. Monitor shall have the authority to employ, at the cost and expense of the Respondent, such attorneys, consultants, accountants, and other representatives and assistants as are necessary to carry out Monitor's duties and responsibilities as allowed pursuant to the Order.

2.2 Compensation. Monitor shall be compensated by Respondent for his services under this Agreement, including all work in connection with the negotiation and preparation of this Monitor Agreement, pursuant to the fee schedule attached as Confidential Exhibit A for time spent in connection with the discharge of his duties under this Agreement and the Order. In addition, Respondent will pay: (a) out-of-pocket expenses reasonably incurred by Monitor in the performance of his duties under the Order; and (b) fees and disbursements reasonably incurred by any advisor appointed by Monitor pursuant to the first paragraph in Article II. At its own expense, Respondent may retain an independent auditor to verify such invoices. Monitor shall provide Respondent with monthly invoices for time and expenses that include details and an explanation of all matters for which Monitor submits an invoice to Respondent. Respondent shall pay such invoices within thirty (30) days of receipt. Monitor and Respondent shall submit any disputes about invoices to the Commission for assistance in resolving such disputes.

2.3 To the extent available, Respondent will provide Monitor with temporary workspace and access to office equipment owned or used by Respondent at sites that Monitor elects to visit in order to fulfill his obligations under this Agreement. Monitor agrees to comply with all of Respondent's safety and security regulations, instructions and procedures while at Respondent's sites and make reasonable efforts to minimize disruption to Respondent's ongoing business operations.

ARTICLE III

3.1 Monitor's Liabilities and Indemnification. Respondent shall indemnify Monitor and hold Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of Monitor'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 Monitor. Monitor's maximum liability to Respondent relating to services rendered in accordance with this Agreement (regardless of form of action, whether in contract, statutory law, or tort) shall be limited to an amount equal to the total sum of the fees paid to Monitor by the Respondent. Any claim arising from this Agreement that Respondent may have against Monitor must be brought no later than one (1) year following the termination or expiration of this Agreement. In the performance of his duties under this Agreement, Monitor shall exercise the standard of care and diligence that would be expected of a reasonable person in the conduct of his own business affairs. Monitor shall not be liable for any delays or other failures to perform resulting from circumstances or causes beyond his reasonable control, including, without limitation, fire or other casualty, act of God, strike or labor dispute, war or other violence, or any law, order or

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- a. Assuring that Respondent expeditiously complies with all of the obligations, and perform all of responsibilities, of Respondent as required by the Order in this matter;
- b. Monitoring Remedial Agreements; and
- c. Assuring that Confidential Business Information is not received or used by Respondent or Acquirers, except as allowed in the Order in this matter.

1.3 Duration of Monitor's Authority. Monitor shall have all powers and duties described above and consistent with the Order for the term set forth in the Order.

1.4 Confidential and Propriety Information. Monitor must retain and maintain all confidential information, including Confidential Business Information, he receives from either Respondent or Acquirers on a confidential basis, except as is permitted by the Order. Monitor may disclose confidential information only to persons employed by or working with Monitor under this Agreement, to persons employed at the Commission, and as permitted by Respondent or Acquirers with respect to information they provided Monitor. Monitor shall require any person retained by Monitor to assist in carrying out the duties and responsibilities of Monitor to adhere to the same standard of care and obligations of confidentiality to which Monitor must adhere under this Agreement. Monitor shall maintain the confidentiality, for a period of five (5) years after the termination of this Agreement, of all other aspects of the performance of his duties under this Agreement and shall not disclose any confidential information relating thereto.

1.5 Restrictions. Except as set forth in this Agreement and the Order, Monitor shall not be otherwise involved in any way in the management, production, supply and trading, sales marketing, and financial operations of Respondent.

1.6 Reports. Monitor shall report to the Commission pursuant to the terms of the Order and as otherwise requested by the Commission staff.

1.7 Access to Records, Documents and Facilities. Subject to any demonstrated legally recognized privilege, Monitor shall have full and complete access to Respondent's personnel, including Relevant Employees, books, documents, records kept in the normal course of business, facilities and technical information, and such other relevant information as Monitor may reasonably request, related to Respondent's compliance with the obligations of Respondent under the Order in this matter. Documents, records and other relevant information are to be provided in an electronic format if they exist in that form. Respondent shall cooperate with any reasonable request of Monitor and shall take no action to interfere with or impede Monitor's ability to monitor Respondent's compliance with the Order.

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requirement of any governmental agency or authority. Monitor warrants that he will perform his obligations hereunder in good faith. Monitor disclaims other warranties, expressed or implied, other than those expressly agreed to in writing between the Parties.

3.2 Monitor's Removal. If the Commission determines that Monitor ceases to act or fail to act diligently and consistent with the purpose of the Order, Respondent shall terminate this Agreement and appoint a substitute monitor, subject to Commission approval and consistent with the Order.

3.3 Approval by the Commission. This Agreement shall have no force or effect until approved by the Commission.

3.4 Termination. This Agreement shall terminate the earlier of: (a) thirty (30) days following the termination date set forth in the applicable Order; (b) Respondent's receipt of written notice from the Commission that the Commission has determined that Monitor has ceased to act or failed to act diligently, or is unwilling or unable to continue to serve as Monitor; (c) with at least thirty (30) days advance notice to be provided by Monitor to Respondent and to the Commission, upon resignation of Monitor; or (d) when Respondent's last obligation under the Order and the Remedial Agreements that pertain to Monitor's service has been fully performed; provided, however, that the Commission may require that Respondent extend this Agreement or enter into an additional agreement with Monitor as may be necessary or appropriate to accomplish the purposes of the Order. If this Agreement is terminated for any reason, the confidentiality obligations set forth in this Agreement will remain in force.

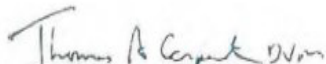
3.5 Conflicts of Interest. If Monitor becomes aware during the term of this Agreement that he has or may have a conflict of interest that may affect or could have the appearance of affecting performance by Monitor of any of his duties under this Agreement, Monitor shall promptly inform Respondent and the Commission of any such conflict.

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IN WITNESS WHEREOF, the parties hereto have executed this Monitor Agreement as of the date first above written.

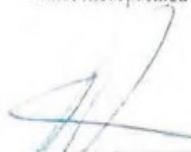
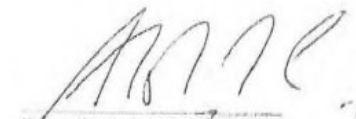
MONITOR

Dr. Thomas Carpenter


Dr. Thomas Carpenter

RESPONDENT

Mars, Incorporated


By: Peter Seka
Title: General Counsel, Corporate
Development
By: Alistair Mackworth Gee
Title: Corporate Development Director

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NON-PUBLIC APPENDIX C
Monitor Compensation

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

NON-PUBLIC APPENDIX D
NVA Divestiture Agreements

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

NON-PUBLIC APPENDIX E
Pathway Divestiture Agreements

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

NON-PUBLIC APPENDIX F
PetVet Divestiture Agreements

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

Analysis to Aid Public Comment

**ANALYSIS OF CONSENT ORDER TO AID PUBLIC
COMMENT****I. Introduction**

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an Agreement Containing Consent Orders (“Consent Agreement”) with Mars, Incorporated (“Mars”), which is designed to remedy the anticompetitive effects that would result from Mars’ proposed acquisition of VCA Inc. (“VCA”).

Pursuant to an Agreement and Plan of Merger announced January 9, 2017, Mars proposes to acquire all of the assets of VCA in a transaction valued at approximately \$9.1 billion (the “Acquisition”). Both parties provide specialty and emergency veterinary services in clinics they operate in cities across the United States. The Commission alleges in its Complaint that the Acquisition, if consummated, would violate 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, by lessening competition in the markets for certain specialty and emergency veterinary services in ten different localities in the United States. The proposed Consent Agreement will remedy the alleged violations by preserving the competition that would otherwise be eliminated by the Acquisition. Specifically, under the terms of the Consent Agreement, Mars is required to divest twelve clinics. Mars and VCA have proposed National Veterinary Associates (“NVA”), PetVet Care Centers (“PetVet”), and Pathway Partners Vet Management Company (“Pathway”) as buyers of these clinics.

The proposed Consent Agreement has been placed on the public record for 30 days for receipt of comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review proposed Consent Agreement and comments received, and decide whether it should withdraw, modify, or make the Consent Agreement final.

Analysis to Aid Public Comment

II. The Relevant Markets and Market Structures

The relevant lines of commerce in which to analyze the Acquisition are individual specialty and off-hours emergency veterinary services. Specialty veterinary services are required in cases that a general practitioner veterinarian cannot treat properly. General practitioner veterinarians commonly refer such cases to a specialist, typically a doctor of veterinary medicine board certified in the required specialty. Individual veterinary specialties include cardiology, critical care, internal medicine, neurology, oncology, ophthalmology, and surgery. Emergency veterinary services are used in acute situations where a general practice veterinarian is not available or in some cases not trained or equipped to treat the animal's medical problem.

The relevant areas for the provision of specialty and off-hours emergency veterinary services are local, delineated by the distance and time that pet owners travel to receive treatment. The distance and time customers travel for specialty services are highly dependent on local factors such as the proximity of a clinic offering the required specialty service, population density, population demographics, traffic congestion, or specific local geographic barriers. The markets affected by the transaction differ by area. The localities and services at issue are:

- a. Oncology in western suburbs of Chicago, IL;
- b. Emergency in Corpus Christi, TX;
- c. Critical Care, Emergency, Internal Medicine, and Surgery in Kansas City, MO;
- d. Critical Care and Emergency in Mesa, AZ;
- e. Critical Care and Oncology in northern New York City, NY and its northern suburbs;
- f. Critical Care, Internal Medicine, Neurology, Oncology, and Ophthalmology in Portland, OR;
- g. Emergency, Internal Medicine, and Oncology in Rockville, MD;
- h. Emergency in San Antonio, TX;
- i. Cardiology, Critical Care, Emergency, Internal Medicine, and Neurology in Seattle, WA; and
- j. Emergency, Internal Medicine, Oncology, and Ophthalmology in Vienna, VA.

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In each locality listed above, the relevant market is highly concentrated. In a number of these markets, the combined firm would be the only provider following the transaction. In other markets, consumers would only have one remaining alternative to the combined firm following the transaction. In all of these markets, the Acquisition would substantially increase concentration within the described localities.

III. Entry

Entry into the relevant markets described above would not be timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the Acquisition. For de novo entrants, obtaining financing to build a new specialty or emergency veterinary facility and acquiring or leasing necessary equipment can be expensive and time consuming. The investment is risky for specialists that do not have established practices and bases of referrals in the area. Further, to become a licensed veterinary specialist requires extensive education and training, significantly beyond that for a general practitioner veterinarian. Consequently, specialists are in short supply, and recruiting them to move to a new area often takes more than two years, making timely expansion by existing specialty clinics unlikely.

IV. Effects of the Acquisition

The Acquisition, if consummated, may substantially lessen competition and tend to create a monopoly in the relevant markets by eliminating head-to-head competition between Mars and VCA in the provision of specialty and emergency veterinary services; increasing the likelihood that Mars would unilaterally exercise market power; and increasing the likelihood that customers would be forced to pay higher prices for and degraded quality of the relevant services.

V. The Consent Agreement

The proposed Consent Agreement effectively remedies the Acquisition's anticompetitive effects in ten markets where both Mars and VCA operate specialty or emergency veterinary clinics by requiring the parties to divest 12 facilities. Clinics in Kansas

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City, New York, and Phoenix are to be divested to NVA. Clinics in Portland, Rockville, and Vienna are to be divested to PetVet. Clinics in Chicago, Corpus Christi, San Antonio, and Seattle are to be divested to Pathway. The divestitures will preserve competition between the divested clinics and Mars' BluePearl or VCA's clinics that offer the same specialty or emergency services within each locality. NVA, PetVet, and Pathway are qualified acquirers of the divested assets. Each firm has significant experience acquiring, integrating, and operating specialty and emergency veterinary clinics.

The divestiture includes all regulatory permits and approvals, confidential business information, including customer information, related to the divested clinics, and other assets associated with providing specialty and emergency veterinary care at the divested clinics. To ensure the divestiture is successful, the Order requires Mars and VCA to secure all third-party consents, assignments, releases, and waivers required to permit the buyers to conduct business at the divested clinics.

As part of these divestitures, Mars and VCA are required to provide reasonable financial incentives to certain employees to continue in their positions. Such incentives may include, but are not limited to, guaranteeing a retention bonus for the specialty veterinarians at the divestiture clinics to assure their continued employment at such clinic, a continuation of all employee benefits, including the funding of regularly scheduled raises and bonuses, and the vesting of pension benefits (as permitted by law and for those Relevant Employees covered by a pension plan), offered by the parties. These provisions ensure that the buyers will have the assets necessary to operate the divested clinics in a competitive manner.

The Consent Agreement contains several additional provisions designed to ensure that the divestitures are successful. First, the Consent Agreement prevents Mars for a period of one year from contracting with any specialty or emergency veterinarian affiliated with a divested clinic. This provides the buyers with sufficient time to build goodwill and working relationships with the veterinarians before Mars could capitalize on its prior relationships in soliciting their services. Second, to ensure continuity of patient care and records as the buyers implement

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their own quality care, billing, and supply systems, Mars will provide transitional services for a period of one year. Finally, the Consent Agreement requires Mars for a period of ten years from the date the Commission issues the Order to provide prior notice to the Commission of its planned acquisitions of specialty or emergency veterinary clinics in certain geographic areas.

The Order requires Mars and VCA to divest the clinics no later than ten business days after the consummation of the Acquisition.

The Commission has appointed Thomas A. Carpenter, D.V.M. as Interim Monitor to ensure that Mars and VCA comply with all of their obligations pursuant to the Consent Agreement and to keep the Commission informed about the status of the transfer of the rights and assets to NVA, Pathway, and PetVet. Dr. Carpenter assists client companies undergoing regulator-mandated ownership transitions and has experience with the purchase and sale of veterinary clinics.

If the Commission determines that NVA, Pathway, and PetVet are not acceptable acquirers of the divested assets, or that the manner of the divestitures is not acceptable, the parties must unwind the sale of rights and assets to NVA, Pathway, and PetVet and divest them to a Commission-approved acquirer within six months of the date the Order becomes final. In that circumstance, the Commission may appoint a trustee to divest the rights and assets if the parties fail to divest them as required.

The purpose of this analysis is to facilitate public comment on the proposed Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Decision and Order or to modify its terms in any way.

Complaint

IN THE MATTER OF

MOONLIGHT SLUMBER, LLCCONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket No. C-4634; File No. 162 3128**Complaint, December 11, 2017 – Decision, December 11, 2017*

This consent order addresses Moonlight Slumber, LLC's environmental and health claims made regarding its baby mattresses. The complaint alleges that respondent made unsubstantiated representations that its mattresses are organic, natural, or plant-based and that its mattresses will not emit any substance, including volatile organic compounds, or off gas; claimed that testing proved that its mattresses do not emit volatile organic compounds; and represented that its mattresses have been certified by Green Safety Shield, yet failed to disclose that it has a material connection to the Green Safety Shield seal. The consent order prohibits misleading representations regarding whether any mattress, blanket, pillow, pad, foam-containing product, or sleep-related product is organic, natural, or plant-based; regarding the emissions from such product; and regarding the general environmental and health benefits of such product and requires respondent to possess competent and reliable evidence, including scientific evidence when appropriate, to substantiate these representations.

Participants

For the *Commission*: Jock Chung and Amanda B. Kostner.

For the *Respondent*: Kenneth W. Vorrasi, Drinker Biddle & Reath, LLP.

COMPLAINT

The Federal Trade Commission, having reason to believe that Moonlight Slumber, LLC, a corporation, has violated the provisions of the Federal Trade Commission Act, and it appearing that this proceeding is in the public interest, alleges:

1. Respondent Moonlight Slumber, LLC ("Moonlight Slumber") is an Illinois corporation with its principal office or place of business at 300 Brook Street, Elgin, Illinois 60120.
2. Respondent has manufactured, advertised, labeled, offered for sale, sold, and distributed baby mattresses.