**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF FLORIDA**

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| UNITED STATES OF AMERICA, | ) | |
| | ) | |
| Plaintiff, | ) | CIVIL ACTION NO. 02-80703 |
| | ) | |
| v. | ) | |
| | ) | |
| NATIONAL ASSOCIATION OF POLICE EQUIPMENT DISTRIBUTORS, INC. | ) | |
| | ) | |
| Defendant. | ) | |

## FINAL JUDGMENT

Plaintiff, United States of America, filed its Complaint on July 29, 2002. Plaintiff and defendant, National Association of Police Equipment Distributors, Inc. ("NAPED"), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law. This Final Judgment shall not constitute any evidence against or an admission by any party with respect to any issue of fact or law herein.

Therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties, it is hereby

ORDERED, ADJUDGED, AND DECREED, as follows:

### I.

### Jurisdiction and Venue

This court has jurisdiction over the subject matter of this action and over the defendant. The Complaint states a claim upon which relief may be granted against the defendant under Section 1 of the Sherman Act, 15 U.S.C. §1. Venue is proper in the District Court for the Southern District of Florida.

## II.

## Definitions

As used in this Final Judgment:

A. "Agreement" means a contract, arrangement, or understanding, formal or informal, oral or written, between two or more persons.

B. "Dealer" or "Distributor" means any person that distributes police equipment products manufactured by another person or who purchases or acquires such products for resale to any other person.

C. "GSA" means General Services Administration of the United States Government.

D. "GSA Program" means the General Services Administration's ("GSA") program pursuant to Section 1122 of the National Defense Authorization Act of 1994, which permits state and local governments to purchase police equipment products for drug interdiction under GSA schedules, and any other program under which state and local governments are able to purchase police equipment products through a GSA schedule.

E. "Manufacturer" means any person who makes or assembles police equipment including each of its divisions, parents, subsidiaries, and affiliates.

F. "NAPED" or "defendant" means National Association of Police Equipment Distributors, Inc., including each of its committees, divisions, parents, subsidiaries, and affiliates, and any person acting on behalf of any of them, as well as its successors and assigns.

G. "Organization" means any corporation, firm, company, sole proprietorship, partnership, joint venture, association, institute, or other business, legal or government entity.

H. "Person" means any natural person, corporation, company, partnership, joint venture, firm, association, proprietorship, agency, board, authority, commission, office or other business or legal entity, whether private or governmental.

I. "Police Equipment" means any product used primarily in law enforcement.

J. "Section 1122" means Section 1122 of the National Defense Authorization Act of 1994, which permits state and local governments to purchase police equipment products for drug interdiction under GSA schedules.

## III.

## Applicability

A. This Final Judgment applies to the defendant and to each of its officers, directors, agents and employees.

B. Defendant shall require, as a condition of any merger, reorganization, or acquisition by any other organization, that the organization to which defendant is to be merged or reorganized, or by which it is to be acquired, agree to be bound by the provisions of this Final Judgment.

C. Nothing in this Final Judgment creates any rights for, or gives standing to, any person not a party to this action.

## IV.

## Prohibited Conduct

Defendant is hereby enjoined from:

A. directly or indirectly entering into, adhering to, or enforcing any agreement with any distributor or dealer to hinder through any means any manufacturer's participation in the GSA Program;

B. directly or indirectly entering into, adhering to, or enforcing any agreement with any distributor or dealer to retaliate in any way against any manufacturer for participating or considering participating in or seeking information about the GSA Program;

C. urging, encouraging, advocating or suggesting that any distributor or dealer urge, encourage, advocate, or suggest to any manufacturer that it discard Section 1122 purchase orders or commit any other misrepresentation to circumvent the requirements of the GSA Program;

D. urging, encouraging, advocating or suggesting that any distributor or dealer refrain from conducting business with any manufacturer for participating in, considering participating in, or seeking information regarding the GSA Program;

E. urging, encouraging, advocating or suggesting that any distributor, dealer or manufacturer (1) refuse to do business with particular persons or types of persons, (2) reduce the amount of business they do with particular persons or types of persons, or (3) do business with particular persons or types of persons only on specified terms.

## V.

## Limiting Conditions

A. Nothing in this Final Judgment shall prohibit defendant from:

1. continuing to disseminate public statements regarding contemplated changes in the laws affecting the GSA Program, GSA policies, or procurement of police equipment by state and local governments;

2. engaging in collective actions to procure government action when such actions are protected under the *Noerr-Pennington* doctrine, as established by *Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc.,* 365 U.S. 127 (1961), and *United Mine Workers v. Pennington,* 381 U.S. 657 (1965);

3. presenting the views, opinions or concerns of its members on topics to manufacturers, distributors or dealers, consumers, or other interested parties, provided that such activities do not violate any provision contained in Section IV above;

B. Nothing in this Final Judgment shall prohibit any individual distributor or dealer, acting alone and not on behalf of or in common with defendant or any of defendant's officers, directors, agents, employees, successors, or assigns, from negotiating any terms of its business relationship with any manufacturer, including terms related to a manufacturer's policies.

## VI.

## Notification Provisions

Defendant is ordered and directed:

A. to publish the Final Judgment and a written notice, in the form attached as

Appendix A to this Final Judgment, in Law & Order magazine within 60 days of the entry of this Final Judgment;

B. to send a written notice, in the form attached as Appendix A to this Final Judgment, to each distributor or dealer who is a current member of NAPED within 30 days of the entry of this Final Judgment; and

C. to send a written notice, in the form attached as Appendix A to this Final Judgment, to each distributor or dealer who becomes a member of NAPED within 10 years of entry of this Final Judgment. Such notice shall be sent within 30 days after the distributor or dealer becomes a member of NAPED.

## VII.

## Compliance Program

A. Defendant is ordered to establish and maintain an antitrust compliance program which shall include designating, within 30 days of entry of this Final Judgment, an Antitrust Compliance Officer with responsibility for implementing the antitrust compliance program and achieving full compliance with this Final Judgment and the antitrust laws. The Antitrust Compliance Officer shall, on a continuing basis, be responsible for the following:

1. furnishing a copy of this Final Judgment within 30 days of entry of the Final Judgment to each of defendant's officers, directors, and employees, except for employees whose functions are purely clerical or manual and do not address issues related to the sale or purchase of police equipment;

2. furnishing within 30 days a copy of this Final Judgment to any person who succeeds to a position described in Section VII A.1;

3. arranging for an annual briefing to each person designated in Section VII A.1 or 2 on the meaning and requirements of this Final Judgment and the antitrust laws;

4. obtaining from each person designated in Section VII A.1 or 2 certification that he or she: (1) has read and, to the best of his or her ability, understands and agrees to abide by the terms of this Final Judgment; (2) is not aware of any violation of the Final Judgment that has not been reported to the Antitrust Compliance Officer; and (3) understands

that any person's failure to comply with this Final Judgment may result in an enforcement action for civil or criminal contempt of court against NAPED and/or any person who violates this Final Judgment;

5. maintaining: (1) a record of certifications received pursuant to this Section; (2) a file of all documents related to any alleged violation of this Final Judgment and the antitrust laws; and (3) a record of all communications related to any such violation, which shall identify the date and place of the communication, the persons involved, the subject matter of the communication, and the results of any related investigation;

6. reviewing the final draft of each speech and policy statement made by any officer, director, or employee in order to ensure its adherence with this Final Judgment;

7. reviewing the purpose for the formation or creation of each committee and task force in order to ensure its adherence with this Final Judgment;

8. reviewing the content of each letter, memorandum, and report written by or on behalf of any director in his or her capacity as a NAPED director or on NAPED stationery in order to ensure its adherence with this Final Judgment.

B. If defendant's Antitrust Compliance Officer learns of any violations of any of the terms and conditions contained in this Final Judgment, defendant shall immediately take appropriate action to terminate or modify the activity so as to comply with this Final Judgment.

## VIII.

## Certification

A. Within 60 days after the entry of this Final Judgment, defendant shall certify to the plaintiff that it has designated an Antitrust Compliance Officer and has distributed the Final Judgment in accordance with Section VII above.

B. For 10 years after the entry of this Final Judgment, on or before its anniversary date, defendant shall file with plaintiff an annual statement as to the fact and manner of its compliance with the provisions of Sections VI and VII.

## IX.

## Plaintiff's Access

A. For the purpose of determining or securing compliance with this Final Judgment or determining whether this Final Judgment should be modified or terminated, and subject to any legally recognized privilege, authorized representatives of the Antitrust Division of the United States Department of Justice, shall upon written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant, be permitted:

1. access during regular business hours to inspect and copy all records and documents in the possession, custody, or under the control of defendant, which may have counsel present, relating to any matters contained in this Final Judgment;

2. to interview defendant's officers, directors, employees or agents, who may have their individual counsel present, regarding any such matters; and

3. to obtain written reports from defendant, under oath if requested, relating to any matters contained in this Final Judgment.

B. Defendant shall have the right to be represented by counsel in any process under this Section.

C. No information or documents obtained by the means provided in this Section shall be divulged by the plaintiff to any person other than duly authorized representatives of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If, at the time information or documents are furnished by defendant to plaintiff, defendant represents and identifies, in writing, the material in any such information or documents to which a claim of protection may be asserted under Rule 26 (c) (7) of the Federal Rules of Civil Procedure, and defendant marks each pertinent page of such material, "subject to claim of protection under Rule 26 (c) (7) of the Federal Rules of Civil Procedure," then 10 days notice shall be given by plaintiff to defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendant is not a party.

## X.

## Duration of the Final Judgment

Except as otherwise provided hereinabove, this Final Judgment shall remain in effect until 10 years from the date of entry.

## XI.

## Construction, Enforcement, Modification and Compliance

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of its provisions, for its enforcement or compliance, and for the punishment of any violation of its provisions.

## XII.

## Public Interest

Entry of this Final Judgment is in the public interest.

DATED:

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UNITED STATES DISTRICT JUDGE