

IN THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF
COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

PACIFIC SCIENTIFIC COMPANY,
a corporation,

Defendant.

Civil Action No.: 1:96CV00165

Filed:

Entered: April 17, 1996

FILED

APR 18 1996

CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

FINAL JUDGMENT

WHEREAS plaintiff, United States of America (hereinafter "United States") having filed its Complaint herein, and defendant, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

AND WHEREAS, defendant has agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, prompt and certain divestiture of certain assets is the essence of this agreement;

AND WHEREAS, the parties intend to require defendant to divest, as a viable line of business, the Drinking Water Quality Monitoring Assets so as to ensure, to the

sole satisfaction of the plaintiff, that the Acquirer will be able to manufacture and sell Drinking Water Quality Monitoring Systems as a viable, ongoing line of business;

AND WHEREAS, defendant has represented to plaintiff that the divestitures required below can and will be made and that defendant will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

NOW, 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 hereto, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

I

JURISDICTION

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against the defendant under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

II

DEFINITIONS

As used in this Final Judgment:

A. "Drinking Water Quality Monitoring Systems" means water particle detection systems used in the evaluation of potable water, including but not limited to: (1) on-line systems, such as the "Water Particle Counting System" (WPCS™), (2)

portable systems, such as the VersaCount LV™/LogEasy™ integrated water sample particle counting system, and (3) laboratory-based systems, such as stationary liquid batch sample particle counting systems.

B. "Pacific Scientific" means defendant Pacific Scientific Company, a California corporation with its headquarters in Newport Beach, California, and includes its successors and assigns, their subsidiaries, affiliates, directors, officers, managers, agents and employees.

C. "Met One" means Met One, Inc., a California corporation with its headquarters in Grants Pass, Oregon, and its successors and assigns, their subsidiaries, affiliates, directors, officers, managers, agents and employees.

D. "Drinking Water Quality Monitoring Assets" means all of Pacific Scientific's U.S. assets and rights relating to the research and development, manufacture and sale of Pacific Scientific's Drinking Water Quality Monitoring Systems, other than real property, and Met One's software relating to Drinking Water Quality Monitoring Systems. Drinking Water Quality Monitoring Assets include, but are not limited to, all Pacific Scientific rights to patents, trade secrets, technology, know-how, specifications, designs, drawings, processes, production information, manufacturing information, testing and quality control data, servicing information, research materials, technical information, distribution information, information stored on management information systems (and specifications sufficient for the Acquirer to use such information), software specific to drinking water quality

monitoring systems, inventory sufficient for the Acquirer to complete all safety and efficacy studies, studies or tests necessary to obtain EPA or other governmental approvals, and all data, contractual rights, materials and information relating to obtaining EPA approvals and other government or regulatory approvals within the United States, and certain rights to brand or trade names (excluding the HIAC/Royco, Royco, Pacific Scientific, and Met-One trade names). Drinking Water Quality Monitoring Assets also include all Pacific Scientific customer lists, customer information, prospects, mailing lists, quotations and proposals for Drinking Water Quality Monitoring Systems and their applications, service contracts for Drinking Water Quality Monitoring Systems and their applications, advertising materials, advertising assistance, marketing training, and marketing assistance for Drinking Water Quality Monitoring Systems and their applications, and copies of and rights to software and technical information for Drinking Water Quality Monitoring Systems and their applications. Drinking Water Quality Monitoring Assets shall include assets sufficient, to the sole satisfaction of the plaintiff, to ensure that the Acquirer will be able to manufacture and sell Drinking Water Quality Monitoring Systems as a viable, ongoing line of business.

E. "Divestiture Assets" means the Drinking Water Quality Monitoring Assets, or such lesser portion thereof as is sufficient to ensure, to the sole satisfaction of the plaintiff, that the Acquirer will be able to manufacture and sell Drinking Water Quality Monitoring Systems as a viable, ongoing line of business.

F. "Acquirer" means the entity or entities to whom Pacific Scientific shall divest the Divestiture Assets.

III

APPLICABILITY

A. The provisions of this Final Judgment apply to the defendant, its successors and assigns, their subsidiaries, affiliates, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Pacific Scientific shall require, as a condition of the sale or other disposition of all or substantially all of the Divestiture Assets other than as provided in this Final Judgment, that the acquiring party or parties agree to be bound by the provisions of this Final Judgment.

IV

REQUIREMENT TO HOLD SEPARATE

Prior to the divestiture contemplated by this Final Judgment:

A. Pacific Scientific shall preserve, hold, and continue to operate the business of Pacific Scientific and the business of Met One as ongoing businesses, with their assets, management, and operations separate, distinct, and apart from one another. Pacific Scientific shall use all reasonable efforts to maintain the business of Pacific Scientific and the business of Met One as viable and active competitors.

There shall be no exchange between Pacific Scientific or Met One of any confidential business information (other than accounting information required in the ordinary course of business) or any technology or know-how.

B. Pacific Scientific shall not, without the consent of the United States, sell, lease, assign, transfer, or otherwise dispose of, or pledge as collateral for loans (except such loans and credit facilities as are currently outstanding or replacements or substitutes therefor) the Divestiture Assets or any business assets of Met One, except that any such asset that is replaced in the ordinary course of business with a newly purchased asset may be sold or otherwise disposed of, provided the newly purchased asset is identified as a replacement for an asset to be divested.

C. In its efforts to preserve and maintain the business of Pacific Scientific and the business of Met One as viable and active competitors, the obligations of Pacific Scientific shall include, but are not limited to: preserving all equipment, all rights to brand or trade names, patents, trade secrets, technology, know-how, specifications, designs, drawings, processes, production information, manufacturing information, testing and quality control data, servicing information, research materials, technical information, distribution information, customer lists, information stored on management information systems (and specifications sufficient for the Acquirer to use such information), software specific to Pacific Scientific's or Met One's divestiture assets, inventory sufficient for the Acquirer to complete all safety and efficacy studies, studies or tests necessary to obtain EPA or other governmental

approvals, and all data, contractual rights, materials and information relating to obtaining EPA approvals and other government or regulatory approvals within the United States. These obligations do not preclude sales in the ordinary course of business.

D. Pacific Scientific shall provide and maintain sufficient working capital to maintain the Divestiture Assets business and the business of Met One as viable, ongoing businesses.

E. Pacific Scientific shall provide and maintain sufficient lines and sources of credit to maintain the Divestiture Assets business and the business of Met One as viable, ongoing businesses.

F. Pacific Scientific shall preserve the business assets of Pacific Scientific and Met One in a state of repair equal to their state of repair as of the date of Pacific Scientific's acquisition of Met One.

G. Pacific Scientific shall maintain on behalf of the businesses of Pacific Scientific and Met One in accordance with sound accounting practice, separate, true and complete financial ledgers, books and records reporting the profit and loss and liabilities of the businesses on a monthly and quarterly basis.

H. Pacific Scientific shall refrain from terminating or reducing any current employment, salary, or benefit agreements for any management, engineering, or other technical personnel employed by Met One or by Pacific Scientific in connection with the Divestiture Assets business of Pacific Scientific, except in the ordinary course of

business, without the prior approval of the United States.

I. Pacific Scientific shall refrain from taking any action that would have the effect of reducing the scope or level of competition between the businesses of Pacific Scientific and Met One without the prior approval of the United States.

J. Pacific Scientific shall refrain from taking any action that would jeopardize its ability to divest the Divestiture Assets as a viable ongoing line of business.

K. When an agreement has been reached for the sale of the Divestiture Assets that is satisfactory to the plaintiff in its sole discretion, Pacific Scientific may be released from the restrictions of this Part IV once the divestiture sale has been consummated, in the sole discretion of the plaintiff. Such release shall become effective when plaintiff so notifies the Court.

V

DIVESTITURE OF ASSETS

A. Pacific Scientific is hereby ordered and directed, within 30 days of the date this Order is entered, to divest the Divestiture Assets. Plaintiff, in its sole discretion, may agree to an extension of this time period, and shall notify the Court in such circumstances.

B. Divestiture of the Divestiture Assets under Section V.A shall be accomplished in such a way as to satisfy the United States that the Divestiture Assets can and will be operated by the Acquirer as a viable, ongoing line of business.

Divestiture of the Divestiture Assets under Section V.A shall be made to a purchaser for whom it is demonstrated to the sole satisfaction of the United States that (1) the purchase is for the purpose of competing effectively in the manufacture and sale of Drinking Water Quality Monitoring Systems, and (2) the Acquirer has the managerial, operational, and financial capability to compete effectively in the manufacture and sale of Drinking Water Quality Monitoring Systems.

C. Pacific Scientific shall take all reasonable steps to accomplish quickly the divestitures contemplated by this Final Judgment.

D. Pacific Scientific agrees that, if it fails to divest the Divestiture Assets within the time specified in Section V.A, it shall not oppose nor contest in any way a civil contempt penalty of not more than \$100,000 as may be recommended and moved for by the United States. Pacific Scientific further agrees that, if it fails to divest the Divestiture Assets within the time specified in Section V.A, it shall not oppose nor contest in any way civil contempt penalties of not more than \$10,000 per day, for each day after the date the United States moves for the appointment of a trustee pursuant to Section VI.A until the date it consents to appointment of a trustee pursuant to Section VI, as may be recommended and moved for by the United States.

VI

APPOINTMENT OF TRUSTEE

A. In the event that Pacific Scientific has not divested the Divestiture

Assets within 30 days of the date this Order is entered, the Court shall, on application of the United States, appoint a trustee selected by the United States to effect the divestiture of the Divestiture Assets. Unless plaintiff otherwise consents in writing, the divestiture shall be accomplished in such a way as to satisfy plaintiff, in its sole discretion, that the Divestiture Assets can and will be used by the Acquirer as a viable on-going line of business. The Divestiture shall be made to an Acquirer for whom it is demonstrated to plaintiff's sole satisfaction that the Acquirer has the managerial, operational, and financial capability to compete effectively, and that none of the terms of the divestiture agreement interfere with the ability of the purchaser to compete effectively.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Divestiture Assets. The trustee shall have the power and authority to accomplish the divestiture at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Section VII of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. The trustee shall have the power and authority to hire at the cost and expense of defendant any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestiture, and such professionals and agents shall be solely accountable to the trustee. The trustee shall have the power and authority to accomplish the divestiture at the earliest possible time to a purchaser acceptable to plaintiff, and shall have such other powers as this Court shall

deem appropriate. Defendant shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance, or on the grounds that the sale is contrary to the express terms of this Final Judgment. Any such objections by defendant must be conveyed in writing to plaintiff and the trustee within ten (10) days after the trustee has provided the notice required under Section VII.

C. The trustee shall serve at the cost and expense of Pacific Scientific, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Pacific Scientific and the trust shall then be terminated. The compensation of such trustee and that of any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

D. Pacific Scientific shall use its best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of Pacific Scientific and Met One, and defendant shall develop financial or other information relevant to such

assets as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendant shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee shall thereupon promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

F. The Acquirer shall not, without the prior written consent of the United States, sell any of the acquired assets to, or combine any of the acquired assets with those of, Pacific Scientific during the life of this decree. Furthermore, the Acquirer shall notify plaintiff 45 days in advance of any proposed sale of all or substantially

all of the assets, or control over those assets, acquired pursuant to this Final Judgment.

VII

NOTIFICATION

A. Pacific Scientific or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify plaintiff of any proposed divestiture required by Section V or VI of this Final Judgment. If the trustee is responsible, it shall similarly notify Pacific Scientific. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same. Within fifteen (15) days after receipt of the notice, plaintiff may request additional information concerning the proposed divestiture, the proposed purchaser, and any other potential purchaser. Pacific Scientific or the trustee shall furnish the additional information within fifteen (15) days of the receipt of the request. Within thirty (30) days after receipt of the notice or within fifteen (15) days after receipt of the additional information, whichever is later, the United States shall notify in writing Pacific Scientific and the trustee, if there is one, if it objects to the proposed divestiture. If the United States fails to object within the period specified, or if the United States notifies in writing Pacific Scientific and the trustee, if there is one, that it does not object, then the divestiture may be consummated, subject only to Pacific

Scientific's limited right to object to the sale under Section VI.B. Upon objection by the United States or by Pacific Scientific under Section VI.B, the proposed divestiture shall not be accomplished unless approved by the Court.

B. Thirty (30) days from the date when this Order becomes final, and every thirty (30) days thereafter until the divestiture has been completed or a trustee is appointed, Pacific Scientific shall deliver to plaintiff a written report as to the fact and manner of compliance with Section V of this Final Judgment. Each such report shall include, for each person who during the preceding thirty (30) days made an offer, expressed an interest or desire to acquire, entered into negotiations to acquire, or made an inquiry about acquiring any ownership interest in the Divestiture Assets or any of them, the name, address, and telephone number of that person and a detailed description of each contact with that person during that period. Pacific Scientific shall maintain full records of all efforts made to divest all or any portion of the Divestiture Assets.

VIII

FINANCING

Pacific Scientific shall not finance all or any part of any purchase made pursuant to Sections V or VI of this Final Judgment without the prior written consent of the United States.

IX

COMPLIANCE INSPECTION

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States, including consultants and other persons retained by the plaintiff, shall, upon the written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Pacific Scientific made to its principal offices, be permitted:

1. access during office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendant, which may have counsel present, relating to any matters contained in this Final Judgment; and

2. subject to the reasonable convenience of Pacific Scientific and without restraint or interference from them, to interview Pacific Scientific directors, officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Assistant Attorney General in charge of the Antitrust Division, made to Pacific Scientific at its principal offices, Pacific Scientific shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information nor any documents obtained by the means provided in

this Section IX shall be divulged by any representative of the United States to any person other than a duly authorized representative 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 Pacific Scientific to plaintiff, Pacific Scientific represents and identifies in writing the material in any such information or documents for which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Pacific Scientific 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 plaintiff shall give ten (10) days notice to Pacific Scientific prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which Pacific Scientific is not a party.

X

RETENTION OF JURISDICTION

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 such further orders and directions as may be necessary or appropriate for the construction, implementation, or modification of any of the provisions of this Final Judgment, for the enforcement of compliance herewith, and for the punishment of any violations

hereof.

XI

TERMINATION

This Final Judgment will expire on the tenth anniversary of the date of its entry.

XII

PUBLIC INTEREST

Entry of this Final Judgment is in the public interest.

Dated: April 17, 1996

Court approval subject
to procedures of Antitrust
Procedures and Penalties Act,
15 U.S.C. § 16



United States District Judge