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17 **UNITED STATES DISTRICT COURT**  
18 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
19 **SAN FRANCISCO DIVISION**

21 UNITED STATES OF AMERICA,  
22  
23 Plaintiff,  
24 v.  
25 VA PARTNERS I, LLC, et al.,  
26 Defendants.  
27

Case No. 16-cv-01672 (WHA)

**UNITED STATES’  
MOTION AND MEMORANDUM  
FOR ENTRY OF FINAL  
JUDGMENT**

1 Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h)  
2 (“APPA” or “Tunney Act”), Plaintiff United States of America (“United States”) moves  
3 for entry of the proposed Final Judgment filed in this civil antitrust proceeding on July  
4 12, 2016 (ECF No. 38-1 and attached as Exhibit A). The proposed Final Judgment may  
5 be entered at this time without further proceedings if the Court determines that entry is in  
6 the public interest. 15 U.S.C. § 16(e). The Competitive Impact Statement (ECF No. 39),  
7 filed in this matter on July 12, 2016, explains why entry of the proposed Final Judgment  
8 would be in the public interest. The United States is filing simultaneously with this  
9 Motion and Memorandum a Certificate of Compliance (attached as Exhibit B) setting  
10 forth the steps taken by the parties to comply with all applicable provisions of the APPA  
11 and certifying that the sixty-day statutory public comment period has expired.

## 12 **I. BACKGROUND**

13 On April 4, 2016, the United States filed a Complaint against VA Partners I,  
14 LLC, (“VA Partners I”), ValueAct Capital Master Fund, L.P. (“Master Fund”), and  
15 ValueAct Co-Invest International, L.P. (“Co-Invest Fund”) (collectively, “ValueAct” or  
16 “Defendants”), related to Master Fund’s and Co-Invest Fund’s acquisition of voting  
17 securities of Halliburton Co. (“Halliburton”) and Baker Hughes Incorporated (“Baker  
18 Hughes”) in 2014 and 2015. The Complaint alleges that ValueAct violated Section 7A of  
19 the Clayton Act, 15 U.S.C. § 18a, commonly known as the Hart-Scott-Rodino Antitrust  
20 Improvements Act of 1976 (the “HSR Act”).

21 On July 12, 2016, the United States filed a Stipulation (ECF No. 38), a proposed  
22 Final Judgment (ECF No. 38-1), and a Competitive Impact Statement (ECF No. 39). The  
23 terms of the proposed Final Judgment are designed to prevent future HSR violations of  
24 the sort alleged in the Complaint. The proposed Final Judgment also sets forth required  
25 access and inspection procedures to enable the United States to determine and ensure  
26 compliance with the proposed Final Judgment.

1           The Stipulation provides that the proposed Final Judgment may be entered by the  
2 Court after the completion of the procedures required by the APPA. The  
3 Competitive Impact Statement explains the basis for the Complaint and the reasons why  
4 the entry of the proposed Final Judgment would be in the public interest. Entry of the  
5 proposed Final Judgment would terminate this action, except that the Court would retain  
6 jurisdiction to construe, modify, or enforce the provisions of the Final Judgment and to  
7 punish violations thereof.

## 8 **II. COMPLIANCE WITH THE APPA**

9           The APPA requires a sixty-day period for the submission of written comments  
10 relating to the proposed Final Judgment, 15 U.S.C. § 16(b). In compliance with the  
11 APPA, the United States filed a Competitive Impact Statement with the Court on July 12,  
12 2016; published the proposed Final Judgment and Competitive Impact Statement in the  
13 *Federal Register* on July 25, 2016 (*see* 81 Fed. Reg. 48450); and ensured that a summary  
14 of the terms of the proposed Final Judgment, together with directions for the submission  
15 of written comments relating to the proposed Final Judgment and Competitive Impact  
16 Statement, were published in *The San Francisco Chronicle* on seven different days  
17 during the period of July 18-24, 2016 and in *The Washington Post* on seven different  
18 days during the period of July 18-24, 2016. The sixty-day public comment period  
19 terminated on September 23, 2016, and the United States received one public comment.  
20 On October 17, 2016, the United States filed with the Court the comment and its  
21 Response to Public Comment. On October 21, 2016, the United States published in the  
22 *Federal Register* the comment and its Response to Public Comment (*see* 81 Fed. Reg.  
23 72832).

24           The United States has filed a Certificate of Compliance simultaneously with this  
25 Motion and Memorandum that states that all the requirements of the APPA have been  
26 satisfied. It is now appropriate for the Court to make the public interest determination  
27 required by 15 U.S.C. § 16(e) and to enter the proposed Final Judgment.  
28

1 **III. STANDARD OF JUDICIAL REVIEW**

2 Before entering the proposed Final Judgment, the APPA requires the Court to  
3 determine whether the proposed Final Judgment “is in the public interest.” 15 U.S.C. §  
4 16(e)(1). In making that determination, the Court is required to consider:

- 5
- 6 (A) the competitive impact of such judgment, including termination of  
7 alleged violations, provisions for enforcement and modification,  
8 duration of relief sought, anticipated effects of alternative remedies  
9 actually considered, whether its terms are ambiguous, and any  
10 other competitive considerations bearing upon the adequacy of  
11 such judgment that the court deems necessary to a determination of  
12 whether the consent judgment is in the public interest; and
- 13 (B) the impact of entry of such judgment upon competition in the  
14 relevant market or markets, upon the public generally and  
15 individuals alleging specific injury from the violations set forth in  
16 the complaint including consideration of the public benefit, if any,  
17 to be derived from a determination of the issues at trial.

18 15 U.S.C. § 16(e)(1)(A), (B). In its Competitive Impact Statement filed with the Court  
19 on July 12, 2016, the United States explained the meaning and proper application of the  
20 public interest standard under the APPA and now incorporates those portions of the  
21 Competitive Impact Statement by reference.

22 **IV. ENTRY OF THE PROPOSED FINAL JUDGMENT IS IN THE PUBLIC**  
23 **INTEREST**

24 As described above, the United States alleged in its Complaint that ValueAct’s  
25 acquisitions of voting securities of Halliburton and Baker Hughes violated the HSR Act.  
26 As explained in the Competitive Impact Statement, the proposed Final Judgment contains  
27 injunctive relief and requires the payment of civil penalties of \$11 million, which are  
28 designed to prevent future violations of the HSR Act. The proposed Final Judgment also  
29 provides compliance procedures to ensure compliance with the proposed Final Judgment.

30 The public has had the opportunity to comment on the proposed Final Judgment  
31 as required by the APPA. As explained in the Competitive Impact Statement and the  
32 Response to Public Comment, entry of the proposed Final Judgment is in the public  
33 interest.

1 **V. CONCLUSION**

2 For the reasons set forth in this Motion and Memorandum and in the Competitive  
3 Impact Statement, the Court should find that the proposed Final Judgment is in the public  
4 interest and should enter the proposed Final Judgment without further proceedings.  
5 Plaintiff United States respectfully requests that the proposed Final Judgment be entered  
6 at this time.

7  
8 Dated: October 21, 2016

Respectfully submitted,

9  
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